

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 8

9 Transcript of Jury Trial before The Honorable
10 James O. Browning, United States District Judge, Las
11 Cruces, Dona Ana County, New Mexico, commencing on
12 February 7, 2018.

13 For the Plaintiff: Ms. Maria Armijo, Mr. Randy
14 Castellano, Mr Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks,
16 Mr. Richard Jewkes, Ms. Theresa Duncan, Mr. Marc
17 Lowry, Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan
18 Villa, Ms. Justine Fox-Young.

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1	I N D E X	
2	By Ms. Jacks	2472
3	By Mr. Beck	2474
4	By Ms. Fox-Young	2476
5	By Mr. Maynard	2478
6	EXAMINATION OF MARIO RODRIGUEZ	
7	By Ms. Armijo	2482
8	By Mr. Lowry	2549
9	By Ms. Armijo	2551
10	By Mr. Lowry	2562
11	By Ms. Armijo	2577
12	By Mr. Villa	2758
13	REPORTER'S CERTIFICATE	2890
14	EXHIBITS ADMITTED	
15	Defendants' EV Admitted	2839
16	Defendants' EW and EX Admitted	2841
17	Defendants' V13 Admitted	2480
18	Government 223-A Admitted	2535
19	Government 223-A Admitted	2551
20	Government 238Admitted	2493
21	Government 682 Admitted	2748
22	Government 751 and 752 Admitted	2758
23	Government 753 Admitted	2577
24		
25		

1 THE COURT: All right. Good morning,
2 everyone. We'll go on the record and see if anybody
3 has anything we need to discuss.

4 I think for the present time I'm not going
5 to allow these two documents in. I guess I'm having
6 trouble with that last layer of hearsay. Not
7 knowing the informants, I'm a little reluctant to go
8 off on the "not trustworthiness," but I think in
9 some ways that is the problem. We just don't know
10 what the -- lacking a legal duty of these people to
11 report, we don't know who they are, what they are.

12 I'll continue to think about it when we
13 take some documents one at a time. But I am having
14 trouble with the last layer of hearsay where the
15 information is coming from. I'm not seeing that
16 they had a business duty or a legal duty to report
17 that. So I won't let that in right now, but I'll
18 continue to look at it.

19 MR. LOWRY: And I'll continue to --

20 THE COURT: Okay, now. And that's where I
21 am. I'm always a little reluctant to go off on
22 trustworthiness, but given the testimony that I've
23 seen about informants, what the defendants' own
24 defenses are, it's a little difficult to put a lot
25 of stock into an informant or confidential, and just

1 run with it. And so I think in the end, I may never
2 get over the -- that prong.

3 But I think there may be more problems up
4 the chain, and that is with the legal duty of the
5 confidential informants, whoever they are and
6 whatever their motives, whether that can be placed
7 in a public record or business record and meet the
8 hearsay exception.

9 Mr. Castellano, do you have something?

10 MR. CASTELLANO: I have additional -- an
11 additional issue. We tried filing it last night,
12 but CM/ECF was down. We filed this morning. It's a
13 403 motion to exclude the videotapes of the contact
14 visits.

15 THE COURT: I got it. Here's my thing on
16 that. You labeled it 403, and that may be where you
17 are, but in there you also tried to liken these to
18 prior inconsistent statements. It seems to me --
19 and I'll -- I certainly can be educated on this.

20 It seems to me it's more in the nature
21 of -- if I understand the defendants' position,
22 these are benefits that these informants got. Y'all
23 are saying they took advantage of the benefit they
24 got of a contact visit. But they're saying the
25 Government looked away and gave them a little extra

1 on the contact visit.

2 So it seemed to me it's not a whole lot
3 different than, yes, they get on the stand, and they
4 admit these are the benefits they got. But if there
5 is some record or document, those have been coming
6 in to prove the benefits. How is it different than
7 that?

8 MR. CASTELLANO: Well, those records
9 haven't come in. They've been asking them about --

10 THE COURT: Well, I'll give you an
11 example. Just the plea agreement. The plea
12 agreement has been coming in, even though we've
13 gotten really everything from the witness on the
14 stand. But we bring in the plea agreement.

15 MR. CASTELLANO: And we've been
16 introducing the plea agreements.

17 THE COURT: Sure.

18 MR. CASTELLANO: Well, the difference is
19 that there actually is no evidence that they had
20 these benefits in addition to just a regular contact
21 visit. Even the cooperators so far have admitted
22 that.

23 The other issue is it's cumulative in
24 nature. So if we bring it out in direct, which we
25 have been, and at least one of the defense attorneys

1 brings it in, the jury has heard it twice. And if
2 all four defense teams do it, they've heard it five
3 times. So by the time they get to the video, it's
4 also cumulative in nature because it will have been
5 the fifth time they've heard reference to the -- to
6 the visit. So there is another issue with
7 cumulative informants.

8 And like I said, it's not a benefit -- the
9 contact visit, everyone agrees that's a benefit they
10 received. But sexual contact was never approved.
11 And so that's actually not a benefit. That's just
12 an indication that they broke the rules. And so
13 that wouldn't qualify as benefits.

14 THE COURT: Well, if it's -- if the
15 arguments are just 403 and cumulative, I'll probably
16 keep it out -- I mean, I'll probably let them put
17 that evidence on. If you convince me that there is
18 something more in this prior inconsistent statement
19 and it shouldn't come in, then maybe I can relook at
20 it. But at the present time, it seems to me it's
21 not a prior inconsistent statement, so it's not
22 subject to those rules.

23 It is, as you labeled your motion, more of
24 403 or cumulative issue. And I'd be inclined to let
25 them make their point.

1 MR. CASTELLANO: One indication that it
2 wasn't a benefit was that Javier Ruben is doing 20
3 extra years as a result of violating the rules. So
4 it clearly wasn't a benefit. The reason I made the
5 analogy to 613 is 613 says, once you admit it, the
6 extraneous information really isn't necessary. Once
7 they've already admitted the act, then it doesn't
8 come in. So that's why I made that analogy.

9 THE COURT: Well, I understand your point,
10 and I understand your analogy better. So it's not
11 you're making that argument; you're just making an
12 analogy.

13 MR. CASTELLANO: That's correct.

14 THE COURT: Okay.

15 MR. CASTELLANO: Thank you, Your Honor.

16 THE COURT: What is it that you're so
17 concerned about with these tapes? They seem to be
18 rather small. But what is it that you're really
19 concerned about?

20 MR. CASTELLANO: Well, I think it's unduly
21 prejudicial under Rule 403. The jury has already
22 heard -- or will hear -- what happened. And so just
23 really at this point, it's really just embarrassing
24 the witnesses more than they need to be. They're
25 obviously, going to get spanked for misbehaving, and

1 they deserve that. But to show the video doesn't
2 do -- doesn't add anything to the case. It doesn't
3 address any elements, for example. So it is
4 somewhat of a collateral issue.

5 THE COURT: Okay. Does the Government
6 have anything else? Mr. Beck?

7 MR. BECK: Your Honor, I think there may
8 be a likeness to harassing a witness, you know, in a
9 cross-examination. Once the facts are out there,
10 once the witness admits that he had sex, once he
11 admits he wasn't able to, once he admits that he was
12 reprimanded by New Mexico Corrections Department for
13 doing that, really there -- it's just been
14 impeachment with extrinsic evidence, which 608(B)
15 wouldn't allow.

16 So I think there -- so I think there is
17 multiple grounds for keeping that out. It's also a
18 waste of time. And, really, there is no purpose for
19 those videos after you admit it, except to harass
20 the witness and inflame the jury.

21 So I understand that Rule 403 is very
22 often, if not almost always, a losing argument. But
23 I think in this case -- I think with the testimony
24 that the witnesses will give -- I think with the
25 testimony that's come in about what has happened to

1 them once these facts were found out, I don't think
2 that whatever probative value the videos may have
3 additionally, I think that probative value is
4 substantially outweighed by not only the danger of
5 unfair prejudice, but a waste of time, confusing the
6 issues, and as I said, just harassing and
7 embarrassing the witnesses.

8 THE COURT: Who is the next -- what's the
9 next contact visit I may see?

10 MR. BECK: I believe it's Jerry Armenta,
11 Your Honor.

12 THE COURT: Okay. Is that coming up
13 today?

14 MR. BECK: It may be. I doubt it. It
15 may more likely be tomorrow morning.

16 THE COURT: Which defendant may be the
17 proponent of it?

18 MS. JACKS: We'll be the proponent of the
19 evidence.

20 THE COURT: Just think about this: What
21 if I were to liken this more to it's kind of being
22 used to show the witnesses' bad character by
23 specific acts to show actions in conformity with the
24 character. So it's kind of 404(B) evidence.

25 It's not -- I'm not quite buying what the

1 Government is saying, but the point is that you're
2 saying that these witnesses are bad people because
3 of this incident, and bad people, I guess, lie on
4 the stand. It's sort of a 404(B). Just think about
5 it.

6 MS. JACKS: I'm happy to. Do you want me
7 to respond now or do that later?

8 THE COURT: No. Just think about it.
9 When it comes up, we'll deal with it. But that's
10 one thought that I had.

11 Do you have something before we bring the
12 jury in?

13 MS. BHALLA: Just quickly, Your Honor. I
14 wanted to move for the admission of Defendants'
15 Exhibit Z8 into evidence from yesterday and I failed
16 to do that after Court. It was the call that Lupe
17 Urquizo made to his brother, where he tells him that
18 they have him on a wire, and they showed him the
19 transcript. It was used for impeachment.

20 But I also think that it goes to show bias
21 and motive because he had testified that he did this
22 on his own free will. The fact of the matter is the
23 reason he decided to cooperate was because he got
24 caught. And I think that that goes to bias and
25 incentive and motive to lie, Your Honor.

1 THE COURT: Do you object?

2 MR. BECK: Your Honor, we object.

3 THE COURT: Yeah, let me keep those out.

4 I'll give them some thought. But let's keep them

5 out. I think they're strictly for impeachment

6 purposes. But I'll give it some thought.

7 MS. BHALLA: Thank you, Your Honor.

8 THE COURT: All rise.

9 (The jury entered the courtroom.)

10 THE COURT: All right. Everyone be

11 seated.

12 Well, good morning, everyone. I

13 appreciate everybody being back and ready to go and

14 on time. I appreciate the lawyers doing the same

15 thing, and the parties. Everybody has been very

16 good to try to really keep things moving, and I

17 think we're on schedule, so I think we're doing good

18 on that score, but it's really because of

19 everybody's efforts to be here on time and ready to

20 go.

21 I know some folks are dealing with some

22 tummy issues, and I know some people are dealing

23 with some allergies, and, of course, Mr. Perez has

24 been sick. I appreciate everybody hanging in there.

25 And if we run into problems, we'll have to stop and

1 address those, so -- but it's that time of year
2 where people do get sick. And I appreciate
3 everybody hanging in there and trying -- trying to
4 make it work. We'll just see how it goes.

5 All right. Mr. Blanco, I remind you that
6 you're still under oath. And Ms. Jacks, do you wish
7 to --

8 MS. JACKS: Thank you. I was just about
9 to finish, and I'm going to do that right now.

10 THE COURT: All right.

11 CONTINUED CROSS-EXAMINATION

12 BY MS. JACKS:

13 Q. Good morning, Mr. Blanco.

14 A. Good morning.

15 Q. I just had one other topic that I wanted
16 to cover with you, and that was in regards to your
17 testimony about blue pod or the pods in Unit 1-A in
18 March of 2014 being SNM pods. Do you recall that
19 testimony?

20 A. Yes.

21 Q. And my question -- I guess I just have a
22 couple questions on that topic.

23 First of all, does the New Mexico
24 Department of Corrections have what's called a
25 validation process that they go through in order to

1 label somebody an SNM member?

2 A. Yes.

3 Q. Okay. And there are certain criteria that
4 have to be met and documented before somebody can be
5 labeled an SNM member; is that right?

6 A. Correct.

7 Q. And if somebody is undergoing that process
8 but has not been validated by the Department of
9 Corrections, are they considered an SNM suspect?

10 A. Correct.

11 Q. And that -- that same validation criteria
12 and process, that applies to other groups that are
13 labeled security threat groups within the Department
14 of Corrections; correct?

15 A. Correct.

16 Q. So you have to validate -- you go through
17 the same validation process before you officially
18 label somebody a Los Carnales gang member?

19 A. Correct.

20 Q. Okay. So when you say that the pods in
21 Unit 1-A, back in March of 2014, were SNM pods, do
22 you mean that the individuals in them were either
23 suspected SNM members or validated SNM members?

24 A. Yes.

25 Q. They could be either?

1 A. Correct.

2 Q. Okay. And do you know, for example, what
3 the status of Daniel Sanchez was on March 7 of 2014,
4 in respect to whether he was a suspected SNM member
5 or a validated SNM member?

6 A. I believe he was a suspected --

7 Q. He's a suspected --

8 A. Suspected, I believe so.

9 Q. And his brother, Ronald Sanchez, was also
10 in that blue pod Unit 1-A on March 7, 2014, right?

11 A. Correct.

12 Q. And Ronald Sanchez, is he also labeled a
13 suspected SNM member?

14 A. Yes.

15 Q. As of that date?

16 A. Yes.

17 MS. JACKS: Thank you. I have nothing
18 further.

19 THE COURT: Thank you, Ms. Jacks.

20 Mr. Beck, do you have redirect of Mr.
21 Blanco?

22 MR. BECK: Yes, Your Honor, thank you.

23 REDIRECT EXAMINATION

24 BY MR. BECK:

25 Q. Good morning, Mr. Blanco.

1 A. Good morning.

2 Q. Mr. Perez' attorney, Ms. Fox-Young, asked
3 you yesterday about Mr. Perez' movements after the
4 Molina murder. Do you recall that?

5 A. Yes.

6 Q. Was he initially moved because you were
7 placing other inmates in different areas throughout
8 Southern New Mexico Correctional Facility?

9 A. Yes.

10 Q. Was he then moved to Santa Fe to the
11 Penitentiary of New Mexico?

12 A. Yes.

13 Q. Was this done after Mr. Walker --
14 Mr. Perez' walker was confiscated and you observed
15 the towels tying together his walker?

16 A. Yes.

17 Q. Who else was moved to the Penitentiary of
18 New Mexico around that time?

19 A. Basically everybody that was involved in
20 that situation -- or in that incident, the Molina
21 incident.

22 MR. BECK: Nothing further.

23 MS. JACKS: Your Honor, I would object.
24 It would seem like everybody that was suspected to
25 be involved that -- that was a conclusion that was

1 based on hearsay.

2 THE COURT: Well, if he knows personally.
3 Ask him if he knows personally who else was moved
4 and I think he has the basis to answer that
5 question.

6 BY MR. BECK:

7 Q. Do you know personally who else was moved
8 at that time?

9 A. Yes.

10 THE COURT: All right. I'll leave it --
11 leave the answer. Thank you, Mr. Beck.

12 All right. Mr. Blanco.

13 Ms. Fox-Young, do you have something?

14 MS. FOX-YOUNG: Brief recross, Your Honor.

15 THE COURT: All right. Ms. Fox-Young.

16 RECROSS-EXAMINATION

17 BY MS. FOX-YOUNG:

18 Q. Mr. Blanco, are you aware of how long it
19 was before Mr. Perez was moved to the Penitentiary
20 of New Mexico?

21 A. No, not exactly.

22 Q. You don't know if it was more than a year
23 later?

24 A. It was definitely less than a year later.

25 Q. Mr. Blanco, I'm going to show you an

1 exhibit that's already been entered into evidence.
2 It's Defendants' V24. And are you familiar with the
3 physical location reports that the department
4 generates?

5 A. Yes.

6 Q. Okay. Do you recognize this document?

7 A. Yes.

8 Q. And can you see on this document -- I
9 think it's -- I can show you. Do you see right
10 here, this entry that I'm underlining, June 17,
11 2015?

12 Can you tell where Mr. Perez was moved
13 according to this document on June 17, 2015? I'm
14 circling it.

15 A. Yes.

16 Q. Where was he moved?

17 A. It shows PNM.

18 Q. Okay. And so prior to June 17, 2015, he
19 was at Southern New Mexico Correctional Facility?

20 A. Correct.

21 Q. Do you have any reason to dispute the
22 accuracy of this document that was produced by the
23 Corrections Department?

24 A. No.

25 Q. Okay. And so Mr. Perez was moved to PNM

1 June 17, 2015, and you don't know exactly why; is
2 that right?

3 A. At that point, everybody was moved prior
4 to the --

5 Q. I'm asking specifically about Mr. Perez.

6 A. This particular document --

7 Q. You don't know why he was moved on June
8 17, 2015?

9 A. No, not June 17.

10 MS. FOX-YOUNG: Thank you. Your Honor, no
11 further questions.

12 THE COURT: Thank you, Ms. Fox-Young.

13 Mr. Beck do you have anything further?

14 MR. BECK: No, Your Honor.

15 THE COURT: Mr. Maynard, do you have
16 questions?

17 MR. MAYNARD: Yes, Your Honor.

18 THE COURT: Mr. Maynard.

19 RECROSS-EXAMINATION

20 BY MR. MAYNARD:

21 Q. With respect to moving inmates after the
22 Molina homicide, would it be fair to say that
23 Corrections just decided to move everyone in the
24 blue pod?

25 A. No, not everyone in the blue pod.

1 Q. Not everyone. So some were moved and some
2 were not?

3 A. Correct.

4 Q. How about the neighboring pods?

5 A. No.

6 Q. Do you know if Mr. Herrera was moved
7 shortly after the incident?

8 A. I don't recall.

9 Q. And, in fact, if I were to show you a
10 location history of Mr. Herrera, would that inform
11 your knowledge about whether or not Mr. Herrera was
12 moved?

13 A. I could see if he was moved or not, yes.

14 MR. MAYNARD: I'm not sure what the --
15 V13. If I may, and this has been disclosed in the
16 discovery process --

17 THE COURT: Has this already been
18 admitted?

19 MR. MAYNARD: It has not been admitted.

20 MR. BECK: I don't have any objection.

21 THE COURT: You don't have any objection?
22 All right. So this is V13. Any objection from any
23 other defendant?

24 All right. Defendants' Exhibit V13 will
25 be admitted into evidence.

1 (Defendants' Exhibit V13 admitted.)

2 BY MR. MAYNARD:

3 Q. And I'd like to focus on the timeframe
4 shortly after March of 2014. And at the top of the
5 page, by the way, Mr. Blanco, we'd have to get to
6 the top of the page to indicate whose location
7 history this is.

8 Does that appear to be the location
9 history of Carlos Herrera?

10 A. Yes.

11 Q. Okay. Now, does it give a location during
12 the timeframe between 2013 and 2016?

13 A. Yes.

14 Q. And where is Mr. Herrera located in the
15 correction system during that approximate three-year
16 timeframe? Is he not in Southern New Mexico?

17 A. He was in Southern New Mexico and
18 transferred to PNM.

19 Q. And so he was moved in 2016 -- January 27
20 of 2016, for whatever reason?

21 A. Correct.

22 Q. About -- almost two years after the
23 incident?

24 A. Correct.

25 Q. Okay. Does that -- do you have any

1 question about the authenticity of this exhibit?

2 A. No.

3 MR. MAYNARD: Your Honor, I'd like to move
4 it into evidence.

5 THE COURT: This is V13?

6 MR. MAYNARD: V13, yes.

7 THE COURT: We've already admitted it.

8 MR. MAYNARD: Okay. No further questions.

9 THE COURT: Thank you, Mr. Maynard.

10 Mr. Beck, do you have anything?

11 MR. BECK: Nothing further.

12 THE COURT: Mr. Blanco, you may step down.

13 Is there any reason Mr. Blanco cannot be
14 excused from the proceedings?

15 MR. BECK: Not from the Government, Your
16 Honor.

17 MS. FOX-YOUNG: We'd like to reserve.

18 THE COURT: All right. So you're subject
19 to re-call. You'll have to stay outside of the
20 courtroom but you're welcome to leave the
21 courthouse.

22 All right. Thank you, Mr. Blanco, thank
23 you for your testimony.

24

25

1 THE COURT: All right. Ms. Armijo, does
2 the Government have its next witness or evidence?

3 MS. ARMIJO: Yes, Your Honor. Mario
4 Rodriguez.

5 THE COURT: Mr. Rodriguez, if you'll
6 remain standing, raise your right hand to the best
7 of your ability. Ms. Standridge, my courtroom
8 deputy, will swear you in before you're seated.

9 MARIO RODRIGUEZ,
10 after having been first duly sworn under oath,
11 was questioned, and testified as follows:

12 THE CLERK: Please be seated. State and
13 spell your name for the record.

14 THE WITNESS: Mario Rodriguez.

15 THE COURT: Mr. Rodriguez. Ms. Armijo.

16 DIRECT EXAMINATION

17 BY MS. ARMIJO:

18 A. M-A-R-I-O, R-O-D-R-I-G-U-E-Z.

19 Q. Good morning, Mr. Rodriguez.

20 A. Good morning.

21 Q. Mr. Rodriguez, are you an SNM Gang member?

22 A. Yes, ma'am.

23 Q. When did you join the SNM?

24 A. In 2006.

25 Q. And what is the SNM?

1 A. It's the most violent, dangerous criminal
2 organization in New Mexico. It's based within the
3 prison system and outside, and it has ties to other
4 criminal organizations throughout the United States.
5 Its sole -- it's based around violence.

6 Q. Now, I said SNM. What is its full name?
7 Let me back up. I am referencing SNM. Does that
8 stand for anything?

9 A. Syndicato de Nuevo Mexico.

10 Q. I'm sorry, could you say that again?

11 A. Syndicato de Nuevo Mexico.

12 Q. And now, have you previously denied that
13 you're a gang member?

14 A. Yes, ma'am.

15 Q. Tell us about that.

16 A. Well, you're not supposed to admit it.
17 It's just not something you do. You don't admit
18 that you're a gang member, no matter what. And I
19 didn't admit to it. It's just something that
20 doesn't come natural.

21 Q. Now, who brought you into the gang, if
22 anyone?

23 A. Arturo Garcia, James Yoakum, Juan Mendez,
24 and San Juan Silva.

25 Q. And where did this occur at?

1 A. PNM Level 6, North facility, in Santa Fe,
2 New Mexico.

3 Q. Now, are there different -- within the
4 SNM, is there a structure? Are there different
5 positions?

6 A. Yes, there is a structure.

7 Q. Tell us about that.

8 A. It's called a tabla. It's people Anthony
9 Baca appointed before he went out of state. It's
10 Arturo Garcia, Juan Mendez, Rupert Zamora, Gerald
11 Archuleta, and Baby Robert, Robert Martinez.

12 Q. Okay. Now, you mentioned Anthony Baca.

13 A. He's the leader.

14 Q. Okay. And does he have a nickname?

15 A. Pup.

16 Q. Do you see him in the courtroom?

17 A. Yes, ma'am.

18 Q. Where do you see him?

19 A. Right there.

20 Q. Okay. You say, "Right there." Can you,
21 for the record, be a little bit more specific?

22 A. Toward the back corner, sitting next to a
23 woman, and in between a man -- his lawyer.

24 Q. And what color suit?

25 A. Looks like black.

1 MS. ARMIJO: May the record reflect
2 identification of Mr. Baca?

3 THE COURT: The record will so reflect.

4 BY MS. ARMIJO:

5 Q. And you indicated that he was the leader?

6 A. Yes, ma'am, him and another individual
7 named Ramon Clark, Razer.

8 Q. Now, you talked about the tabla. What was
9 your role in the SNM?

10 A. I was a soldier.

11 Q. What's a soldier?

12 A. I was putting in work and representing the
13 SNM to the fullest, giving it my all, to uplift it
14 and never bring it down. I was very close with
15 Daniel Sanchez. I became -- you know, we had a lot
16 of respect for each other, and pretty much like his
17 right-hand man.

18 Q. Okay. You said a couple of things there
19 I'm going to ask you about. You mentioned Daniel
20 Sanchez.

21 A. Yes, ma'am.

22 Q. Do you see him in the courtroom?

23 A. Yeah. He looks a little different with
24 his hair cut. But yeah, I see him. Looks a little
25 funny. I see him.

1 Q. What is he wearing?

2 A. Glasses, with a grayish suit.

3 Q. And where is he seated?

4 A. Next to Amy Jacks.

5 MS. ARMIJO: Okay. May the record reflect
6 the identification of Daniel Sanchez?

7 THE COURT: The record will so reflect.

8 BY MS. ARMIJO:

9 Q. You indicated that he looks a little bit
10 different. I'm going to show you an exhibit.

11 MS. ARMIJO: If I may just have a moment,
12 Your Honor?

13 THE COURT: Certainly.

14 Q. I'd like to display Exhibit 560. I think
15 we're on the Elmo still. Can you see that picture,
16 Mr. Rodriguez?

17 A. Yes.

18 Q. Who is that?

19 A. That's Daniel Sanchez.

20 Q. All right. And is that how he appeared in
21 December of 2015?

22 A. Yes, ma'am.

23 Q. All right. Now, you indicated that you
24 were a soldier and you put in work. What do you
25 mean by that?

1 A. Anything the S needed me to do, I was
2 willing to do it. Anything that -- ice an enemy. I
3 don't care if there's cameras on, COs around. If I
4 had a weapon, I would stab them or assault them.
5 Anything the S -- within the S, any enemies,
6 anything I need to do, I would do it.

7 Q. All right. Now, tell us what type of
8 crimes, if any, the SNM is involved in.

9 A. Anything based around violence, murder,
10 extortion, kidnapping, assaults, distribution of
11 drugs, weapons. Anything to bring in money. Just
12 all criminal activity, pretty much.

13 Q. Now, in your mind, did the SNM have a
14 philosophy?

15 A. Yes.

16 Q. What philosophy is that?

17 A. Well, you're supposed to be a carnal
18 first, a brother first. Never politic against each
19 other. Supposed to have each other's back. You're
20 in a workout routine, you're studying, and trying to
21 be the best SNM member you can be, and that's --

22 Q. Now, what about rules? Did SNM have
23 certain rules?

24 A. Yes, ma'am.

25 Q. What rules do you recall?

1 A. You can't do what I'm doing here today.

2 Q. What's that?

3 A. Testifying against my homies and
4 snitching. And you can't -- no matter where you
5 are, you never deny that you're an SNM member to
6 another criminal organization. Gang members always
7 represent the S. If you go into a pod with 11
8 enemies, you got to tell them you're the S, you got
9 to come out, and you got to defend yourself and
10 assault them.

11 Q. What do you mean, come out?

12 A. When we go into a lockdown situation, come
13 out to a tier time, pop the doors to come out. No
14 matter if you're going to get killed or whatever,
15 you've got to come out.

16 Q. You mean instead of staying in your cell?

17 A. Right. But you can't be a child molester,
18 rapist. You can't have really bad charges like that
19 in order to be an SNM member. You can't be Z. Just
20 basic rules, basic criminal rules.

21 Q. You already mentioned a tabla.

22 A. Right.

23 Q. And you mentioned people on the tabla.
24 When were those people on the tabla?

25 A. When I came into the SNM in 2006, they

1 were already in place.

2 Q. Okay. And I want to mention a couple of
3 people that you've said. You mentioned Gerald
4 Archuleta?

5 A. Yes, ma'am.

6 Q. Does he have a nickname?

7 A. Does he have anything?

8 Q. No, does he have a nickname?

9 A. Oh, Styx.

10 Q. Okay. And you mentioned somebody by the
11 name of Robert Martinez, Baby Rob. And did you
12 mention Arturo Garcia?

13 A. Yes, ma'am.

14 Q. And what is his nickname?

15 A. I've always known him as Arturo, but he
16 goes by Shotgun.

17 Q. Now, you mentioned something about your
18 relationship with Mr. Sanchez.

19 A. Yes, ma'am.

20 Q. And can you describe what you were to him?

21 A. That was my big brother. I looked up to
22 him, I respected him, and I had a love and respect
23 for him. I was pretty much his right-hand man.
24 Wherever I went, where he went, I enforced anything
25 he wanted to do, because I looked up to him.

1 Q. What do you mean by "enforce"?

2 A. I was his right-hand man. If he needed
3 something done, if he needed to talk to an
4 individual he couldn't reach, and he knew I had
5 influence on that person, he would come to me and
6 ask me to speak to that person, or -- I just had his
7 back 100 percent.

8 Q. Now, is he an SNM Gang member?

9 A. Yes, ma'am.

10 Q. Now, let's talk a little bit now about
11 your background. When you came into the prison,
12 were you a member of a street gang?

13 A. Yes.

14 Q. What street gang?

15 A. East Side Folk.

16 Q. East Side Folk?

17 A. Yes, ma'am.

18 Q. And is that from the Silver City area?

19 A. Silver City, New Mexico.

20 Q. Now, I want to talk a little bit about
21 your criminal history.

22 A. Right.

23 Q. Do you have felony convictions?

24 A. Yes, ma'am.

25 Q. Where did all of the crimes occur for

1 which you received felony convictions?

2 A. In the Grant County Detention Center,
3 Silver City, New Mexico. I think I have one felony
4 conviction from the streets. I think it's a
5 burglary and larceny. But that's the only one from
6 the streets.

7 Q. Okay. How old were you when you were --
8 as an adult, how old were you when you first went
9 into -- being arrested?

10 A. I was 18 years old, straight out of the
11 juvenile system.

12 Q. Okay. Did you have a nickname?

13 A. Yes, ma'am.

14 Q. What's your nickname?

15 A. They call me Blue.

16 Q. How did you get that nickname?

17 A. From a teacher in the New Mexico Boys
18 School.

19 Q. Do you know why you got that name?

20 A. He said because I always looked like I was
21 depressed or sad. They used to call me Baby Blue,
22 and a couple of guys switched it just to Blue.

23 Q. Did that stick with you throughout your
24 time in the Corrections?

25 A. Yes, ma'am.

1 Q. Even while as an SNM member?

2 A. Yes, ma'am.

3 Q. Now, 18 years old. Where is it that you
4 are first detained?

5 A. When I first got arrested, or in prison?

6 Q. No, when you first got arrested.

7 A. In Grant County Detention Center, Silver
8 City, New Mexico.

9 Q. And did something happen there that got
10 you actually sent to Corrections?

11 A. A lot happened there. I picked up, I
12 think, five to six different cases in the county
13 jail. Do you want me to go through them?

14 Q. I'm sorry?

15 A. Five or six cases. Do you want me to go
16 through them?

17 Q. In just a moment.

18 A. Okay.

19 Q. Now, I'm going to --

20 MS. ARMIJO: Your Honor, I'm going to move
21 for admission without objection to Exhibit 238.

22 MR. VILLA: No objection.

23 THE COURT: Not hearing any objection?

24 MS. BHALLA: No objection.

25 THE COURT: All right. Government's

1 Exhibit 238 will be admitted into evidence.

2 (Government Exhibit 238 admitted.)

3 BY MS. ARMIJO:

4 Q. Now, if you can, can you tell us -- I'm
5 first going to move to -- on that exhibit. Is
6 this -- first of all, look at the first page of the
7 exhibit. Is that your name?

8 A. Yes, ma'am.

9 Q. And I don't know if you've had an
10 opportunity to see this before.

11 A. Yes.

12 Q. Are you familiar with this document?

13 A. That's a pen pack.

14 Q. Can you tell the jury what a pen pack is?

15 A. It's something that they prepare for
16 sending you out of state, your fingerprint card. It
17 goes to the NCIC in Washington -- or in West
18 Virginia. I think it's everything to go in your
19 NCIC, all your criminal history.

20 Q. Okay. And it includes your convictions
21 for which --

22 A. Yes.

23 Q. -- you went to Corrections?

24 A. And my judgment and sentence, my J&S.

25 Q. Now, I'm going to move to the fourth page

1 of that, which is Bates 8781, and are you familiar
2 with this item?

3 A. Yes, that's my J&S.

4 Q. Okay. And the J&S stands for?

5 A. Judgment and sentence.

6 Q. Okay. And up here -- and I'm going to
7 circle it -- what are all those?

8 A. Those are all the cases I picked up while
9 in the detention center in Grant County.

10 Q. All right. And so does this include all
11 of your cases that -- at the time when you were
12 sentenced that were kind of put together for one
13 sentence?

14 A. Yeah. Some of them were -- my original
15 street charge was dismissed, and one was an escape
16 that ran concurrent with the rest of them. Pretty
17 much all of them bundled into one.

18 Q. Okay. And I'm going to go to that second
19 page -- the next page, I should say. I spoke
20 poorly. It would be the page after this one. All
21 right? And tell us what we're looking at here.

22 A. These are the Count 2, 3, and 4. And
23 Count 5 was dismissed. Count 2, 3, and 4 is
24 CR-2003-213, a charge I picked up; the case I picked
25 up while in the detention center. Count 1 is

1 another charge I picked up in the detention center,
2 the battery on a peace officer, along with the
3 escaping jail.

4 Q. All right. Let's talk about that first
5 case, the 2003-213.

6 A. Okay.

7 Q. It says here that -- I believe these were
8 the charges that you have here.

9 A. Right.

10 Q. What happened during that incident?

11 A. It was an inmate who we were going to roll
12 out of the county jail. We were going to make him
13 PC.

14 Q. I'm going to slow you down just a moment.
15 Now, you said "we were going to roll out"?

16 A. Yeah.

17 Q. Was there more than just you who committed
18 this crime?

19 A. Yeah. It was four to five who were
20 originally indicted, and four of us got convictions.

21 Q. Okay.

22 A. Do you want me to name them?

23 Q. You don't have to name them. That's fine.

24 A. All right. So we were going to make him
25 go into protective custody. We find he has a

1 receipt for, like, 300 bucks. So I move him into a
2 cell with another inmate to keep him while we use
3 his money for canteen. That inmate began beating
4 him up and assaulting him. And it wasn't long that
5 pretty much the whole pod was beating him up every
6 day.

7 And on this day they were locked in a
8 cell. We were on lockdown. We were locked in the
9 cell, beating him up, playing a board game, and just
10 in the cell, tattooing. And they called me to the
11 cell. I went to the cell, which I was locked
12 into -- that's what the kidnapping was for -- and
13 proceeded to assault him, beat him up. And somebody
14 threw a hot sauce bottle in the tier, told me, "Why
15 don't you shove this in his ass?"

16 Q. I'm sorry. And what?

17 A. "Why don't you shove this in his ass?"

18 One of the guys in the other cell said --
19 so my co-defendant, Joseph Chavez, did it. He
20 shoved it in his ass. I was at the gate. I turned
21 around, and it was going on behind me. I got aiding
22 and abetting for this. I was present during the
23 commission of this crime.

24 Q. All right. And so it talks about -- there
25 is one count of kidnapping and three counts of

1 sexual penetration. And is that the incident that
2 you're talking to? Count 3 mentioned a hot sauce
3 bottle.

4 A. Yes.

5 Q. Count 4 is a lotion bottle.

6 A. Yeah.

7 Q. Okay. And did that occur, as well?

8 A. I think it did. I don't remember that,
9 but I'm pretty sure it probably did. Count 5 was
10 dismissed.

11 Q. Okay.

12 A. Yeah. If you read, go further in the J&S,
13 it will disclose that I got 15 years; nine years for
14 the kidnapping, and three years apiece for the
15 criminal sexual penetrations.

16 Q. All right. And we'll get to the next page
17 of this.

18 A. Okay.

19 Q. Now, were you the one that actually did
20 any of the penetration?

21 A. No, ma'am.

22 Q. And this was in which facility?

23 A. Grant County Detention Center, Silver
24 City, New Mexico.

25 Q. Let's go to the next incident, which is

1 the battery on a peace officer. No, wait. Go back
2 to that page. Sorry. All right.

3 Now -- thank you -- you have a different
4 cause number, CR 2004-29, battery upon a peace
5 officer in the fourth degree. Can you tell us about
6 that incident? And it says it occurred on December
7 26 of 2003.

8 A. There was an officer who, when my
9 girlfriend came to visit me at the time, was kind of
10 like harassing her a little bit, telling her why was
11 she with someone like me; that I was never going to
12 change, and she shouldn't be waiting for me. So
13 when I confronted him on it, he got kind of smart,
14 and I proceeded to try to assault him.

15 Q. Now, the last one there, it says that
16 occurred on December 26, which I believe is after
17 the prior incident that we spoke to.

18 A. Yeah.

19 Q. And then we have another case, 2003-191,
20 which is an escape that occurred actually five days
21 before the first incident you spoke about; is that
22 correct?

23 A. Yes, ma'am.

24 Q. Okay. What did you do there?

25 A. I told the Grant County Detention Center

1 that I swallowed a razor. I swallowed a little
2 piece of metal so it would come up in the x-ray
3 machine so they could house me in the hospital. And
4 during showering, the officer wasn't present to put
5 my shackles on. I looked around, he wasn't there,
6 and I took off. I took off running out of the
7 hospital.

8 Q. And were you arrested right away?

9 A. Yeah, I was.

10 Q. And how old were you when that occurred?

11 A. 2003? I was 18.

12 Q. All right. Now if we go now to the next
13 page, please. So now we're looking at page 3 of
14 your judgment. And is this what you're talking
15 about where you were only sentenced in that first
16 cause to Counts 2, 3, and 4?

17 A. Yes, ma'am.

18 Q. And if we can go to -- I'm sorry, I
19 accidentally did that. If we can go to the next
20 page. And I'm looking at page 4 of the judgment.
21 And it talks about some of your other cases being
22 dismissed as a result of that?

23 A. Um-hum, yes.

24 Q. Okay. Now, how many years did you get for
25 all of these crimes?

1 A. 18 years.

2 Q. And you were how old when you were sent to
3 Corrections?

4 A. I think I was about to turn 19.

5 Q. Now, if we could go now to part of this as
6 well, Bates 8786. Do you have another felony
7 conviction?

8 A. Yes, ma'am.

9 Q. Okay. And we're looking now at Bates
10 8786. At the bottom of the right hand of the page,
11 what incident is this?

12 A. This is an incident that occurred in Santa
13 Rosa, New Mexico, prison.

14 Q. And when did it occur; do you recall?

15 A. I think it was like May of 2006.

16 Q. Oh, actually --

17 A. This is the -- yeah, May.

18 Q. It indicates -- I just circled the first
19 day of May 2005. Does that sound correct?

20 A. Yes, that's when I went to Level 6.

21 Q. Okay. Now, where did this occur, this
22 incident?

23 A. In the Guadalupe County Prison facility in
24 Santa Rosa, New Mexico.

25 Q. So at this point you -- in 2006, you were

1 still with Corrections; is that correct?

2 A. Yes.

3 Q. But at a facility in Santa Rosa; is that
4 what you said?

5 A. Yes, in a prison in Santa Rosa.

6 Q. Do you know what level, if any,
7 classification that was?

8 A. I was a Level 3 custody, general
9 population.

10 Q. And what happened while there?

11 A. The officer for count came around and
12 asked me to stand up. I had my headphones on. And
13 he was telling me to stand up. And I told him,
14 "Fuck you."

15 And he goes -- I had my head phones on, so
16 I didn't hear what he said. So later on, when I
17 came -- I made my cellmate move that day, because I
18 was going to move an SNM member into my room. Some
19 individuals pulled me over and told me, "Why did you
20 make that guy leave?"

21 I told them, "I want to move my homie in."

22 He goes, "That's because you're a
23 chester."

24 I said, "No, I don't do that." Goes for
25 count, someone stopped by your door and calls one a

1 chester.

2 Q. What is --

3 A. Child molester. Okay. And I was, like,
4 "What?"

5 So then they -- I guess they thought that
6 was my charges. So when they came and asked for my
7 J&S, I gave it to them. They read it, said, "Okay,
8 everything is all good."

9 Q. Who is "they"?

10 A. Some inmates. A couple inmates approached
11 me and said, "We want to see your paperwork."

12 So I showed them my paperwork.

13 Q. When you say "paperwork," what are you
14 referring to?

15 A. The J&S we just went through for the
16 criminal sexual penetration.

17 Q. And why is that important, as far as you
18 having that and showing it?

19 A. It's important because whenever you go
20 somewhere, you have to show that you don't have
21 fucked-up charges, or -- say, my charges in
22 particular, I have to show that, because my charges
23 are questionable charges. See, because if that
24 would have happened on the street, some of those
25 charges can get you killed like that. So when they

1 come and ask me for those, I've got have that shit.
2 So I provide it to them. They say, "Okay,
3 everything is all good. That ain't what you are."

4 I told them, "It's not all good. That guy
5 put my life in danger."

6 So I was going to assault him. I put a
7 soda can in a sock. And when he came for count, I
8 approached him, and I beat him with it.

9 Q. All right. And did you then receive this
10 aggravated battery on a peace officer?

11 A. I did.

12 Q. All right. How long of a sentence did you
13 receive for that?

14 A. Seven years.

15 Q. And was that going to be concurrent or
16 consecutive to your time?

17 A. Consecutive.

18 Q. All right. So now going back a little bit
19 to -- you indicated that you were at Santa Rosa. We
20 saw that you were sentenced to Corrections. Was
21 that your first time being sentenced to Corrections
22 for all of those cases?

23 A. Yes, ma'am.

24 Q. And I believe you said you were just not
25 even 19 yet, or had you turned 19?

1 A. I was about to turn 19.

2 Q. And where did they send you to?

3 A. I went to Lea County Corrections Facility
4 in Hobbs. I went to RDC first in Los Lunas.

5 Q. Do you know -- and if you don't know,
6 that's fine -- do you know what they do in Los
7 Lunas, "they" being Corrections?

8 A. They just evaluate your level, your age,
9 your crime, everything like that, and they give you
10 certain points to say what level you're going to go
11 to. If you have, like, I think it's 14 and above,
12 you go to a Level 4. Below, you go to a Level 3.
13 And below 10 you go to a Level 2.

14 Q. Is that kind of like where you go to be
15 classified?

16 A. It's where you go to get classified, yes.

17 Q. Where were you sent after you went to Los
18 Lunas?

19 A. Hobbs, New Mexico, Level 3.

20 Q. How long were you there?

21 A. About maybe five or six months.

22 Q. Where did you go from there?

23 A. I went to Santa Rosa.

24 Q. And is that where this incident that we
25 just saw happened?

1 A. Yes, ma'am.

2 Q. Now, when that happened, were you an SNM
3 member yet, or not?

4 A. No.

5 Q. Okay. I know that you were talking
6 about -- when you were describing the incident, you
7 mentioned something about SNM members.

8 A. Right.

9 Q. Were there SNM members there?

10 A. I had interaction with SNM members
11 throughout my Level 3 in Hobbs, New Mexico, and
12 Santa Rosa. And yes, there was SNM members there.

13 Q. Now, after this incident in Santa Rosa,
14 where were you sent?

15 A. To Santa Fe, New Mexico, Level 6, solitary
16 confinement.

17 Q. Was that as a result of your actions in
18 Santa Rosa?

19 A. Yes, ma'am.

20 Q. And what happened once you got to -- you
21 say, Santa Fe, New Mexico, Level 6? Which facility?

22 A. The North facility.

23 Q. And what happened there? I mean, as far
24 as, did you know people there?

25 A. I knew one person there.

1 Q. Who did you know?

2 A. Tommy Valdez. He's from Silver City.

3 He's an SNM member, or was.

4 Q. And is that when you officially became a
5 member?

6 A. No, not at that time.

7 Q. Okay. When did you officially become a
8 member in relationship to getting up to PNM North?

9 A. I think once I got there, it was all over
10 the news and everything like that, so people had
11 seen what I was there for. And Tommy Valdez started
12 spreading around my case, about what took place in
13 the county jail, because he knew me from the
14 streets. He knew me from the county jail.

15 So I would just go to yard and mind my own
16 business. I walk the square. And slowly but
17 surely, a lot of SNMers started talking to me. My
18 neighbor was Baby Robert. I lived with Carlos
19 Herrera, Lupe Urquizo, and Edward Garcia, which were
20 all SNMers in North 3-B V pod. And I started
21 hearing that they're talking about recruiting me.
22 And one day I was in the yard, minding my own
23 business; and I didn't know him at the time, but
24 Arturo Garcia comes up to me, told me, "Do you want
25 to be down with the S?"

1 Q. What did you take "being down with the S"
2 meant?

3 A. Getting recruited and then earning my
4 bones to be respected within the SNM.

5 Q. Okay. Now you mentioned you didn't know
6 who he was at the time. You mentioned Arturo Garcia
7 before. What is his position in the gang?

8 A. He's a leader. He's on the tabla.

9 Q. And what did you say when he asked you
10 that?

11 A. I told him it's something to think about.
12 I'll think about it. And that was it. I started --
13 I kept walking around.

14 Q. And then did you think about it?

15 A. I thought about it.

16 Q. And then what happened?

17 A. We had a couple more conversations. We
18 had at least three more conversations where he was
19 trying to get me to jump on the ride. Everyone
20 already assumed that I was an SNM member. He was
21 telling me, "Everyone already thinks you are, so you
22 might as well get in."

23 Q. And what was your belief as to why people
24 thought you were already an SNM member?

25 A. I've had that for a while. When I was in

1 the Level 3s, there was always the rumors that I was
2 an SNM member. "He looks like an SNM member." I
3 guess the way I look, I guess.

4 Q. Did you, in fact, decide, after thinking
5 it over and Arturo Garcia talking to you, that you,
6 in fact, wanted to become a member?

7 A. One day in the yard, Eugene Martinez comes
8 to me. He's in the track, which is a cage that can
9 go and talk to all the cages in the solitary
10 confinement yard. And he comes and tells me, he
11 goes, "Arturo wants to know. It's your last time.
12 Do you want to get in or not?"

13 I told him, "Si, mon, I'll get in."

14 Q. You said "si mon."

15 A. That's yes, I'll get in.

16 Q. And I just want to know what that means,
17 "si mon."

18 A. Right. I told him yes. It means yes.

19 Q. "Si mon" means yes?

20 A. Yes.

21 Q. Okay. Now, you mentioned another couple
22 of things I just want to get clear. You talked
23 about the cages?

24 A. Yes.

25 Q. Where were you when this conversation

1 occurred?

2 A. I was in the first handball cage. There's
3 about 12 cages. There's two handball cages, there's
4 about four other cages. They go in a big square and
5 there's a -- the track isn't there anymore. They
6 took the door off it. But there is a big basketball
7 cage, and there's a track around it.

8 Q. And the persons that were on the track --
9 could they go and talk to the people in the cages?

10 A. Yeah, they can go all the way around, talk
11 to every single cage.

12 Q. And the cage that you were in -- why is it
13 that you were in the cage?

14 A. I was one of the first ones that would
15 come out -- why were we put in the cages?

16 Q. Yes.

17 A. That's where they sent everyone that's
18 violent. It's the Level 6 solitary confinement
19 yard.

20 Q. And is that outside?

21 A. It's outside, yes. It's your
22 one-hour-a-day yard.

23 Q. Okay. And what is yard?

24 A. Well, you go for yard, and there's 12
25 other people in the yard in separate cages. And you

1 go out there. There is a dip bar, a pull-up bar, or
2 you just walk around.

3 Q. Okay. That's your opportunity to
4 basically go outside?

5 A. It's the gossip place. Everyone gossips
6 about each other.

7 Q. But if you're Level 6 -- and were you
8 Level 6 at that time?

9 A. I was.

10 Q. Okay. And so you were subject to extra
11 restrictions?

12 A. Yes, ma'am.

13 Q. And is that why you were in the cage, so
14 to speak?

15 A. Yes.

16 Q. Now, once you became an SNM member, what
17 sort of things did you do for SNM?

18 A. Arturo wanted me to be on the low-low. He
19 didn't want no one to know that I was an SNM member.
20 Undercover. He didn't want no one to know. There
21 was a time for a whole year that SNMers were
22 stabbing COs, and he didn't want me involved at all.
23 "Don't get involved because you need to go back to
24 Level 3."

25 He wanted me to put in work on a Burqueno

1 or Sureno.

2 Q. Now, if people did not -- if Corrections
3 did not know you were an SNM member, when you say,
4 "Go back down to Level 3," what do you mean?

5 A. Okay. So there is a process for SNM
6 members. There is a process for general population
7 inmates. If I'm in the Level 6, I'm a general
8 population inmate, not validated or suspected, I'm
9 able to proceed through all the steps. If you're a
10 validator or suspected SNMer, you can only go to
11 Level 4 and live with your own population, which is
12 SNM members.

13 So what Arturo wanted me to do is go
14 through the process and make it back out to Level 3
15 line, where all the enemies were.

16 Q. And was that something that you tried to
17 do?

18 A. I did. I stayed out of trouble for a long
19 time, trying to get out.

20 Q. And when you say "stay out of trouble,"
21 what do you mean by that?

22 A. I didn't go over my phone call limits,
23 behavior logs. I didn't get write-ups. I was just
24 straight, trying to do the program and get out, so I
25 can go do the work so I could prove to the S that I

1 was down.

2 Q. And did you actually do that?

3 A. No.

4 Q. What happened?

5 A. All right. So about 2008, I go for
6 recommendation, because when I got to Level 6, I
7 told them, "How long is it going to take to get out
8 of here?"

9 They told me, "Three years."

10 Q. When you say "they" --

11 A. Classification. They told me up to three
12 years. So I did three years clear conduct, and they
13 denied me. They said that because of the nature of
14 the crime that I was in Level 6 for, that they
15 feared for the security of the prison, the
16 institution; so not let me out.

17 I was involved in a little bit of drug
18 trade at the time. A guy burned me for \$900. And
19 me, being an SNM member, knew that once that got
20 out, that I let someone burn me, then it's going to
21 lower you. So I took it upon myself to get a weapon
22 and stab him.

23 Q. Okay. Now, you mentioned a couple things
24 I'm going to go back and talk about.

25 A. Okay.

1 Q. You mentioned that you were involved in
2 drug activity.

3 A. Right.

4 Q. Okay. When are we talking about? What
5 approximate year is this?

6 A. This is 2008.

7 Q. And what do you mean by drug activity?

8 A. Bringing drugs into the institution
9 through COs and using.

10 Q. Is that something that is common in the
11 SNM?

12 A. Yes, ma'am.

13 Q. Now, you mentioned that somebody had
14 burned you. What do you mean by that?

15 A. He didn't pay his debt to me. I kept on
16 giving him, waiting for the money to come through,
17 and eventually I cut him off.

18 Q. Okay. So were you supplying drugs to him?

19 A. Yes.

20 Q. And where were you getting the drugs from?

21 A. At the time, me and another SNM member
22 were working with two LC members to bring in drugs
23 together through a CO.

24 Q. Okay. And so this person ended up burning
25 you for, as you say, not paying you?

1 A. He didn't pay me.

2 Q. Okay. Now, what significance did that
3 have within the SNM?

4 A. Well, he's going to start bragging around
5 that he burned one of us, and that we didn't do
6 nothing to him, and it makes the SNM look weak.

7 Q. Is that not allowed?

8 A. No.

9 Q. So what did you do?

10 A. I got a weapon from another SNM member
11 while in yard, and I brought it to stab him. And
12 eventually one of the plots came through and I
13 stabbed him.

14 Q. And when you said stabbed him, who did you
15 stab?

16 A. Robert Esparza.

17 Q. What did you stab him with?

18 A. A sharpened piece of metal about five,
19 five and a half inches long.

20 Q. Okay.

21 A. It was a food port pin, to the food port.
22 When the food port is open, you have pins, like,
23 linchpins. Another inmate pulled it out, sharpened
24 it, and gave it to me.

25 Q. All right. And do those sorts of things

1 in prison have a name?

2 A. What is that? Shanks?

3 Q. Yes. What's a shank?

4 A. The fierro, shank, a piece. It's a
5 sharpened piece of metal.

6 Q. And were you convicted for that crime?

7 A. No.

8 Q. And where did this occur, again?

9 A. In the Level 6 PNM North, Santa Fe.

10 Q. And what year was this?

11 A. 2008.

12 Q. Did you consider that -- or let me ask you
13 this. Do you know whether or not that was
14 considered anything as far as your status within the
15 SNM?

16 A. I know two of the tabla members, Juanito
17 Mendez and Arturo Garcia, were taking credit for it,
18 telling people they had told me to do it. But it
19 just verified that I was going to go any extent that
20 was possible to prove that I was down and put in the
21 work. There is a lot of significance in the SNM to
22 do stuff like that.

23 Q. All right. Now did you stay -- that was
24 2008?

25 A. Yes, ma'am.

1 Q. Did that incident help get you moved down
2 to Level 3?

3 A. No, it did not.

4 Q. Okay. Where were you housed at that
5 point?

6 A. Same place.

7 Q. Now, what did you continue doing? We're
8 talking about 2008 and going forward. What did you
9 do for the SNM, if anything, continuing on forward?

10 A. Just the basic -- just, you know, go to
11 yard, work out, you represent -- you carry yourself
12 with respect and you respect others, so you don't
13 put a bad light on the SNM. You just -- there's
14 drug activity. There's sharpening weapons. There's
15 studying to be a better gang member. It's every
16 day, every day you're just trying to be better,
17 better and better at your craft.

18 Q. Now, during this time period, you were
19 being housed with SNM; is that correct?

20 A. The Level 6 PNM North at that time was the
21 SNM stronghold. It was -- every pod had at least
22 six to eight members in it.

23 Q. And who were you being housed with?

24 A. At the time of that assault?

25 Q. Yes.

1 A. At that time of that assault, it was with
2 a guy name Javier Manzanares and Guilardo Rodriguez,
3 and myself were in that pod.

4 Q. I'm going to move forward a little bit to
5 2011. Where are you at?

6 A. I'm at Penitentiary of New Mexico, Santa
7 Fe, Level 5. Right there -- it's a lower-level
8 right there in the same facility.

9 Q. Is it in North or the South facility?

10 A. South facility.

11 Q. And is the South facility where they
12 housed -- why don't you tell me. When you were
13 there, what --

14 A. All Level 5 custody inmates, but they have
15 designated pods for SNM members. They have
16 designated pods for Surenos. If everyone is getting
17 out of Level 6 solitary confinement, you go to tier
18 time. So you come out six inmates at a time.

19 Q. You mentioned Surenos. What are Surenos?

20 A. Surenos from California. They have New
21 Mexico Surenos. You know, they're another group,
22 Security Threat Group.

23 Q. Okay. And I guess we didn't talk about
24 this. Are there other prison gangs, other than SNM?

25 A. Yes, ma'am.

1 Q. Over the time that you've been in SNM?

2 A. Yes, ma'am.

3 Q. And you mentioned Surenos. Is that
4 another one?

5 A. I don't think it's really a New Mexico
6 prison gang, but they are a prison gang. The two
7 dominant gangs -- SNM is the dominant gang, but the
8 LC, Los Carnales, is the rival to SNM.

9 Q. Okay. And so does SNM have any rules as
10 far as over the years in reference to their rivals
11 with Los Carnales?

12 A. Yes.

13 Q. What is that?

14 A. Well, we live next to them in Level 6. We
15 have them as neighbors, and you know, there is --
16 you can treat your enemy with respect and not
17 disrespect them, and still, when the door is open,
18 try to kill each other. There is honor in that. In
19 SNM, there is a lot of honor in that, the way you
20 carry yourself. You just don't want to be
21 disrespectful to them. But it's a kill-on-sight.

22 Q. When you say "Kill-on-sight," what do you
23 mean?

24 A. You assault them until someone is pulling
25 you off him. You try to kill him, or he's going to

1 try to kill you.

2 Q. Going back to 2011, you said you were at
3 the South facility?

4 A. Yes.

5 Q. Were there SNM members with you there?

6 A. I lived in a validated SNM or suspected
7 pod, yes. The whole pod was SNM.

8 Q. Okay. And were there any leaders at the
9 time living with you?

10 A. Baby Robert. Robert Martinez.

11 Q. And you mentioned him earlier as being on
12 the tabla?

13 A. Yes, ma'am.

14 Q. What was your relationship with Baby Rob?

15 A. I was close to him. I was real close to
16 him.

17 Q. Did something happen in 2011 in reference
18 to -- with Robert Martinez and you?

19 A. Yeah, he and I plotted to kill Alex
20 Sosoya, Chulo, another SNM member.

21 Q. And you said Alex Sosoya. What's his
22 nickname?

23 A. Chulo, C-H-U-L-O.

24 Q. And was Sosoya an inmate at the South at
25 the time?

1 A. He was.

2 Q. And what was going on that caused you and
3 Robert Martinez to want to kill Sosoya?

4 A. I believe the incident occurred before I
5 was in the SNM. He was speaking badly of the tabla,
6 telling them they were drug addicts and
7 self-serving; they were just using you for their own
8 reasons. And he was trying to -- you know, he had a
9 little bit of a following within the younger
10 generation. He was trying to get people to plot on
11 Arturo Garcia, Juan Mendez, and Robert Martinez.
12 The only one he didn't want killed out of the tabla
13 was Styx at that time.

14 Q. So he was seen as a little bit of a rebel?

15 A. He was a little bit against the grain,
16 yeah.

17 Q. Now, can you describe physically Robert
18 Martinez for the jury as far as his stature?

19 A. He's a little guy. They call him Baby
20 Rob. He's a little guy. He's not very big. I
21 think Chulo was 6'2". Robert is maybe 5'8",
22 something like that. He's older. He's in his 50s.

23 Q. And Robert Martinez. You indicated he was
24 older --

25 A. Right.

1 Q. -- than Chulo?

2 A. Yes.

3 Q. And how big, again, was Chulo?

4 A. About 6'2", 6'3", about 208, 210 pounds.

5 Q. So when you got there, you were made aware
6 of this issue going on?

7 A. I was aware prior to that. I had told
8 Baby Robert in the Level 6 solitary yard that if --
9 I had his back; that I believed that no one should
10 be speaking badly about the tabla. And you know, if
11 you let people speak badly about the tabla, someday
12 you're going to get up there and they're going to
13 speak badly about you. And guys got to show an
14 example that you can't do that. And if I was ever
15 with him and Chulo, I had his back. I would help
16 him. And it fell in our lap like that.

17 Q. And did it eventually come to that?

18 A. Yes, ma'am.

19 Q. What happened?

20 A. He showed up.

21 Q. Who is "he"?

22 A. Alex Sosoya showed up. I noticed the
23 whole pod got quiet. They were kind of -- they
24 didn't think he was going to show up.

25 Q. What do you mean "show up"?

1 A. He came from Level 6 down to Level 5, to
2 tier time. He showed up on our tier. So they
3 housed him with us. Right away they put him as Baby
4 Robert's neighbor. I was still in orientation when
5 he showed up. So that's a seven-day orientation.
6 You don't get to come out until seven days.

7 Q. Okay. So you indicated that he was moved
8 from the North to the South?

9 A. Yes, ma'am.

10 Q. And you indicated orientation. What does
11 that entail?

12 A. Seven days. You go to classification on
13 the seventh day. They let you know if you can come
14 out or not.

15 Q. Okay. And where, when you're in
16 orientation, are you housed?

17 A. In your cell, on the top tier or the
18 bottom tier, whatever tier you're on. It's the same
19 Level 6. It's just that you're preparing to come
20 out.

21 Q. And so you're kind of being held there,
22 kind of quarantined, until it's allowed for you to
23 come out?

24 A. Right.

25 Q. And is that standard?

1 A. That's standard.

2 Q. So what's going on while Mr. Sosoya is in
3 orientation?

4 A. Well, he's neighbors to Baby Rob, and
5 they've been talking about possibly putting an end
6 to a beef they had. And he's -- a lot of people are
7 trying to talk me out of not helping Baby Robert.
8 People are coming to me and telling me, other SNM
9 members, not to help him, and fuck him, and a bunch
10 of just hatred. And I already told him, "I told
11 Baby Rob I'm going to have his back."

12 So Baby Robert and I started going to yard
13 and plotting together on where to get the weapons
14 from and where we're going to do it, where we were
15 going to assault him.

16 Q. Now, why did you decide to have Baby Rob's
17 back?

18 A. I'm a loyal person, and he was on the
19 tabla. And that's what you're supposed to do in the
20 SNM. You're supposed to have the people on the
21 tabla's back.

22 Q. It was important to you?

23 A. Of course it was important to me.

24 Q. And Sosoya. Was he on the tabla?

25 A. No.

1 Q. Now, did you -- at a certain point in
2 time, did the opportunity arise to where you
3 actually were able to carry out this plan?

4 A. Yes, ma'am.

5 Q. Okay. What happened?

6 A. He came out for, like, five days. And
7 Baby Rob and Chulo spoke, shook hands, and we let
8 him get a little comfortable. They we took our
9 weapons to the yard. We bypassed the strip search
10 and took our weapons to the yard and played some
11 basketball.

12 Q. Where did you get the weapons from?

13 A. I got a hot pot, I cut down the bottom of
14 the hot pot with some spun string, some nylon
15 string, and then I made a candle and melted them
16 down. And Baby Robert got his razor blade out of
17 the shaver.

18 Q. And then you mentioned that you were
19 outside now on the basketball court?

20 A. Yes, on the basketball court.

21 Q. Are there other SNM members there?

22 A. Yeah. There's volunteers in one yard
23 right next to us, and then we're in the other one.
24 There was about 11 SNM members in the yard that day.

25 Q. And what happened?

1 A. We waited. The whole gang unit was
2 watching us for a while. We waited till they left,
3 and then we proceeded to assault him.

4 Q. Okay. And when you say "we proceeded to
5 assault him," what exactly happened?

6 A. He got into an argument with another SNM
7 member in the other yard and he walked away.

8 Q. Who is "he"?

9 A. Chulo, Alex Sosoya. He called one of my
10 good friends a "bitch," and I was supposed to
11 wait -- we were supposed to wait to tire him down a
12 little bit. And I just took flight on him right
13 there. I pulled out my weapon from my knee brace
14 and went to stab him in the neck. When I stabbed
15 him, at that time, I was still learning how to
16 sharpen the plastic ones real good. So when it went
17 in, it went up, and I thought it broke. Baby Robert
18 came in, we decided we'd push him up against the
19 fence, and started assaulting him. He tried to run.
20 I grabbed him by the waist. I picked him and dumped
21 him on his head, and Baby Robert sliced him in his
22 neck.

23 Q. And then what happened?

24 A. We went from this corner to another
25 corner, where I got him, pulled his arms back. I

1 was trying to get Baby Rob to get on top of him to
2 slice his neck again. They shot him. He was there,
3 he was gone. So --

4 Q. What do you mean, "they shot him"?

5 A. The COs were shooting into the yard with
6 tear gas and rubber bullets and all that. So he got
7 hit with a canister in the head.

8 Q. Who is "he"?

9 A. Baby Robert.

10 Q. Okay.

11 A. So with everything going around, I got my
12 hands, and I put them in his eyeballs and tried to
13 pull his eyes out. And when I had -- my hands
14 slipped on all the blood, it went to his mouth, he
15 bit my finger. So I proceeded to bite the top of
16 his ear off.

17 Q. And did you actually bite part of his ear
18 off?

19 A. Yes, ma'am.

20 Q. What happened at that point?

21 A. They were telling me to let him go, let
22 him go. I got up. I was sprayed in the face with
23 tear gas. I looked to see where he was at, and I
24 kicked him in the face. And then I went to kick him
25 again. He was gone.

1 I went up against the cage. The COs were
2 yelling at me. I went up to the cage, I got on the
3 floor. They came in, put the shotgun in the back of
4 my head, and told me not to move and handcuffed me
5 and took me out.

6 Q. Okay. You mentioned that, I guess,
7 correctional officials were trying to stop this
8 fight?

9 A. Yes.

10 Q. Is that a fair assessment?

11 A. Fair assessment.

12 Q. What do you recall as far as efforts to
13 try and stop this incident?

14 A. They were throwing concussion grenades.

15 Q. What are those, as far as what you know?

16 A. They're these grenades that have rubber
17 bullets in them. And when they go off, they're so
18 loud, they're supposed to make you stop. And they
19 dispersed some rubber bullets all over the place.
20 They were discharging all the shotguns they have.
21 They threw, I think, three or four tear gas, and
22 used the terminator gun with the big canisters. And
23 it spins and it shoots canisters. And I believe
24 they called for lethal rounds, as well.

25 Q. Okay. So you mentioned all these other

1 things that they were using?

2 A. Right.

3 Q. And you mentioned some shotguns or --

4 A. Shotguns, yes.

5 Q. Okay. The shotguns that they had at that
6 time -- were they nonlethal force?

7 A. They were nonlethal force.

8 Q. And are you aware, from your time in
9 Corrections, whether or not, in stopping fights,
10 Corrections has to do something first before you
11 mentioned lethal force?

12 A. They have to do everything -- they have to
13 use everything they have to stop it. And if they
14 see that there is a real danger on the life, then
15 they go -- and the inmates aren't stopping, they go
16 for lethal rounds.

17 Q. All right. So are they allowed to use
18 lethal rounds just from the get-go?

19 A. No, not that I'm aware of.

20 Q. So what finally happened that you stopped?

21 A. I couldn't see no more. I was gassed out,
22 and I was tired, and I was sprayed in the face with
23 OC spray, tear gas spray.

24 Q. Now, are you aware -- were you taken
25 anywhere after that incident?

1 A. To Level 6 PNM North facility.

2 Q. Let me stop. I meant that day. Did they
3 go --

4 A. I went to Level 6 that day.

5 Q. Okay. That day. Were you examined or
6 taken to the infirmary or anything?

7 A. Yes, I seen medical. They cleared me.

8 Q. Why did you need to see medical?

9 A. For the tear gas.

10 Q. Do you know whether Mr. Sosoya -- what
11 happened with him?

12 A. Yes, he went to the hospital.

13 Q. And was he actually hospitalized?

14 A. Yes, ma'am.

15 Q. Do you know how long he was hospitalized
16 for?

17 A. I think up to a week. Five days to a
18 week.

19 Q. And then what about Robert Martinez? What
20 happened with him?

21 A. I think he was hospitalized, as well, from
22 the grenade hitting him in the head. I think he had
23 brain swelling. They were going to have to cut a
24 piece of his skull out because his brain was
25 swelling, but they didn't have to.

1 Q. So he was taken to the hospital, as far as
2 you believe?

3 A. Yes, ma'am.

4 Q. Now, you indicated that you bit Mr.
5 Sosoya's ear?

6 A. Yes, ma'am.

7 Q. Had you ever bitten anybody's ear before?

8 A. Yes.

9 Q. When was that?

10 A. In 2008, in the case when I stabbed Robert
11 Esparza. I bit the top of his right ear off.

12 Q. All right. And was that during -- was
13 there a struggle with Mr. Esparza?

14 A. Yeah. I went to go to the door to pull
15 him back by his handcuffs, and he held onto a
16 railing that goes to the top tier. I couldn't --
17 they were reloading the shotgun. I couldn't get him
18 to let go, so I proceeded to bite the top of his ear
19 off.

20 Q. Now, you mentioned you were sent back to
21 Level 6 from Level 5?

22 A. Yes.

23 Q. And did you stay there that day and
24 continuing on for some time in Level 6?

25 A. Yes, I stayed there till the end of 2013.

1 Q. And where did you go in 2013?

2 A. I think it was the end of 2013. I went
3 back to Level 5, South facility.

4 Q. All right. Now, have you ever -- I guess
5 I can see that you have tattoos on your neck.

6 A. Yes, ma'am.

7 Q. Do you have any SNM tattoos?

8 A. I do not.

9 Q. And why is that?

10 A. I wanted to get them at one point in time,
11 when I was in the Level 4 recently, about -- right
12 before the Molina case took place. Daniel Sanchez
13 talked me out of it. And he told me for people like
14 he and I, the onda was in our hearts, so we didn't
15 need it on our bodies.

16 Q. All right. And you're saying a word --

17 A. Onda.

18 Q. Can you spell it for the jury?

19 A. O-N-D-A.

20 Q. What is that?

21 A. It's another word for the SNM. It's like
22 the family.

23 Q. And so you do have, I believe, tattoos
24 from when you were -- from your street gang?

25 A. Yes, ma'am.

1 Q. And I'm going to show -- I think it's
2 already been admitted -- Exhibit 590. What are we
3 looking at in 590?

4 A. That's a six-pointed star. That's a
5 symbol for East Side Folk Gang.

6 Q. That's your street gang?

7 A. Yes, ma'am.

8 Q. And then I want to show Exhibit 593. What
9 are we looking at?

10 A. That's ES, for East Side, with a six-point
11 star in between the E and S.

12 Q. Do you have a tattoo on the back of your
13 head?

14 A. Yes, ma'am.

15 Q. Look at Exhibit 594.

16 A. That's SC, with "Silver City" under it,
17 for my hometown.

18 Q. And I'm circling --

19 A. "Silver City."

20 Q. -- "Silver City." All right.

21 Now, I believe 2011, where were you at?

22 A. 2011?

23 Q. Yes.

24 A. I was in the PNM North facility. After
25 the incident with Sosoya?

1 Q. Yes.

2 A. PNM North facility.

3 Q. And did you, while there -- let me ask
4 you, where was Anthony Baca at that time?

5 A. In 2011?

6 Q. Yes.

7 A. I think he was in Southern New Mexico, in
8 Las Cruces. Oh, no. You know what? He was in X
9 pod, in North 3-B.

10 Q. Okay. And you say North 3-B. What does
11 that refer to?

12 A. The North 3-B is a unit within the Level 6
13 PNM North facility.

14 Q. And you were at the same facility?

15 A. Yes, ma'am. We were in the same pod. We
16 were in X pod.

17 Q. And did you have contact with him?

18 A. That was the first time I really got to
19 know Pup. I knew him just from other interactions,
20 but this is the first time I lived with him and had
21 conversations with him. I also lived with Carlos
22 Herrera at that time.

23 Q. Okay. Do you see Carlos Herrera in the
24 courtroom today?

25 A. Yes, ma'am.

1 MS. BHALLA: We'll stipulate, Your Honor.

2 THE COURT: Does that work for you, Ms.

3 Armijo?

4 MS. ARMIJO: Yes, Your Honor.

5 BY MS. ARMIJO:

6 Q. Okay. Carlos Herrera -- is he an SNM Gang
7 member?

8 A. Yes, ma'am.

9 Q. Now, you indicated that at that time that
10 you were housed with Mr. Baca?

11 A. Yes, ma'am.

12 Q. And did Mr. Baca ever discuss with you SNM
13 as far as --

14 A. Yes.

15 Q. -- a philosophy about it?

16 A. Yes, ma'am.

17 Q. Did he ever show you anything as far as a
18 structure of the SNM?

19 A. Yes, ma'am.

20 MS. ARMIJO: And Your Honor, may I
21 approach the witness?

22 THE COURT: You may.

23 MS. JACKS: Your Honor, I'm assuming this
24 is limited to Mr. Baca?

25 THE COURT: I'm not sure what it is,

1 but --

2 MS. ARMIJO: For the record, Bates 11316.

3 It's Government's Exhibit 223-A. And it is as to

4 Mr. Baca.

5 THE COURT: All right. Any objection to

6 223-A coming into evidence?

7 MR. LOWRY: No, Your Honor.

8 THE COURT: All right. Not hearing any

9 objection, Government's Exhibit 223-A will be

10 admitted into evidence.

11 (Government Exhibit 223-A admitted.)

12 MS. ARMIJO: Actually, may we approach,

13 Your Honor?

14 THE COURT: You may.

15 (The following proceedings were held at

16 the bench.)

17 MR. CASTELLANO: Your Honor, the exhibit
18 is a diagram of potential structure of the SNM Gang.

19 I don't think this is limited only to Mr. Baca. It

20 would be enterprise evidence. And I guess talking

21 about the entire structure of the gang, I think that

22 would relate to all members of the gang, not just to

23 Mr. Baca.

24 MS. JACKS: That would be hearsay.

25 THE COURT: Hold on. Let Mr. Castellano

1 finish. Do you have anything else?

2 MR. CASTELLANO: In terms of whether it
3 could be used for purposes of a co-conspirator
4 statement, we do have overall racketeering. So
5 clearly this would be something that all members buy
6 into. So I do think it's enterprise gang evidence,
7 and not just limited to Mr. Baca, especially if he's
8 sharing it with another SNM Gang member.

9 THE COURT: Is this something that Mr.
10 Baca prepared? It's a little hard to read.

11 MR. CASTELLANO: Mr. Rodriguez prepared
12 it.

13 MS. ARMIJO: No, no.

14 MR. CASTELLANO: This was the one that was
15 in Pup's property?

16 MS. ARMIJO: Yes.

17 MR. CASTELLANO: This is Mr. Baca's.

18 THE COURT: This is something Mr. Baca
19 prepared?

20 MR. CASTELLANO: Yes. Mr. Baca has other
21 things like diagrams and things of that nature
22 laying out how he wanted to structure the
23 enterprise.

24 THE COURT: Okay.

25 MR. LOWRY: Your Honor, may I be heard on

1 this?

2 MS. JACKS: Our objection is hearsay as to
3 Mr. Sanchez or anybody but Mr. Baca. And to the
4 extent that it's being offered as a co-conspirator
5 statement, this is the first time we're hearing
6 about it. This was not addressed at the James
7 hearing.

8 MR. LOWRY: And Your Honor, I would also
9 add to that. This is -- we talked about this in
10 opening. There is no evidence in the record that
11 this plan has ever been adopted by anybody. And in
12 fact, this is one of the political reasons Mr. Baca
13 was driven out of Southern and kited out of the
14 Level 6, because there was a disagreement.

15 THE COURT: That's the reason you object
16 to it coming in?

17 MR. LOWRY: Well, it is his handwriting.
18 I'm not going to dispute that. But absolutely, Your
19 Honor, I agree with Ms. Jacks, I don't think this is
20 evidence of co-conspirator statements because there
21 is no evidence that this was ever adopted by anyone
22 other than Mr. Baca.

23 THE COURT: I don't think it can come in
24 as a co-conspirator statement. So I think that it's
25 just going to be hearsay, so limit it to just Mr.

1 Baca.

2 MR. CASTELLANO: I think it's also useful
3 for its legal effect for nonhearsay purpose. I
4 think there are a number of reasons why this
5 document is relevant as to the entire organization,
6 especially coming from a leader. So if a leader is
7 putting out orders and structure and things of that
8 nature of the entire organization, that is an
9 organizational act.

10 THE COURT: Well, I'm not seeing it for
11 the purpose right at the moment, so I'm going to
12 give the limiting instruction and you can use it
13 just as to Mr. Baca.

14 MR. VILLA: Judge, before we go, your
15 Honor, this isn't related to this document, but I
16 believe Javier Molina's mother is in the back right
17 of the courtroom. She's had her hands over her face
18 most of the morning. Her head is down now, and she
19 appears to be getting emotional. She has been
20 sitting with Mr. Molina's wife in court at other
21 times during the trial. Not right now --
22 Mr. Molina's wife --Mr. Molina in earlier points in
23 time. I know we're going to get into Mr. Molina's
24 testimony. And maybe the Government can caution her
25 about her reactions and behavior in front of the

1 jury.

2 The other issue, I believe Mr. Urquizo's
3 attorney is in the courtroom, Ms. Camunez. And he
4 was reserved by Ms. Jacks. I don't know -- my
5 position is she should be excluded. I know the
6 Court's position; she should be cautioned. But I
7 would ask that she be excluded.

8 THE COURT: Is Urquizo's attorney still in
9 the courtroom? Does anybody know?

10 MS. ARMIJO: I don't know. Along those
11 lines, when I went -- I would just --

12 THE COURT: Let's do this: Why don't we
13 go ahead and take a break and let the jury go, and
14 come back and address some of these issues?

15 (The following proceedings were held in
16 open court.)

17 THE COURT: All right. Let's go ahead and
18 take our morning break. This is getting a little
19 long up here. So we'll take our morning break, and
20 it may be a little bit longer because I may give
21 Ms. Bean her break right now and finish up with the
22 attorneys at the end of our break. So it may be a
23 little longer. All rise.

24 (The jury left the courtroom.)

25 THE COURT: All right. Let's take our

1 break, and then we'll come back and finish up with
2 some of these items. Can I get a copy of that
3 letter, 223?

4 MR. CASTELLANO: I'm getting it right now,
5 Your Honor.

6 (The Court stood in recess.)

7 THE COURT: All right. We'll go on the
8 record. I looked at this Exhibit 223 during the
9 break. It looks so general that I'm not sure it's
10 as inculpatory. I gave some thought to it being a
11 statement against interests, and then we come into a
12 hearsay exception which would then apply to
13 everybody. But I don't think it's really that. So
14 I am going to give the limiting instruction on 223
15 because I think it's limited to Mr. Baca. And I
16 don't see another hearsay exception that's going to
17 pick it up. It's not a co-conspirator. So I will
18 give a limiting instruction on that.

19 Let me do a couple of things before you
20 argue.

21 Is Mr. Urquizo's attorney in the
22 courtroom?

23 MR. BECK: She is, yes, Your Honor.

24 THE COURT: What are you doing in the
25 courtroom today?

1 MS. CAMUNEZ: Observing testimony.

2 THE COURT: Well, for what purpose?

3 MS. CAMUNEZ: Well, ultimately, I think on
4 behalf of my client for purposes of sentencing.

5 THE COURT: Well, I think I'm going to
6 invoke the rule against you and go ahead and exclude
7 you from the courtroom. Okay?

8 MS. CAMUNEZ: Okay.

9 THE COURT: All right. So you'll need to
10 leave.

11 Let's see. Here's what I was going to
12 suggest on Ms. Molina, is I was going to ask one of
13 the Court Security Officers and maybe the
14 Government, to step over to her and tell her that
15 she needs to have better composure in the courtroom,
16 and she needs to sit up. She can't lean on the
17 podium -- or the seats. And so she'll just need to
18 have better composure. If she can't maintain it,
19 she'll need to step out. But I don't want her to
20 distract the jury.

21 MR. O'CONNELL: Your Honor, my name is
22 Jerome O'Connell. We represent the plaintiff
23 family, with Jess Lilley. And if you want me to
24 convey that to her, I would be happy to do that.

25 THE COURT: You're an attorney?

1 MR. O'CONNELL: Yes, Your Honor. I'm
2 sorry I'm not in my Superman clothes.

3 THE COURT: Is that all right, if he does
4 it?

5 MR. BECK: I think that may work well,
6 Your Honor.

7 THE COURT: All right. Does that work for
8 the defendants?

9 Okay. So if you'll just talk to her and
10 just tell her that she needs to sit up, doesn't need
11 to be leaning on the podium -- or the seats back
12 there. She needs to stay up so she doesn't distract
13 the jury.

14 MR. O'CONNELL: Absolutely, Your Honor.
15 I'll be happy to have that conversation with her as
16 soon as she comes back.

17 THE COURT: Then you had something else,
18 Ms. Armijo?

19 MS. ARMIJO: Your Honor, I did. I know it
20 was Mr. Villa that has complained about people in
21 the back of the courtroom. But I want to ask the
22 Court to please have that apply to attorneys as
23 well. Mr. Villa said very loudly in front of the
24 jury when I was showing him the exhibit, "Be careful
25 up there," of course, referring to Mr. Rodriguez.

1 And it was said loud enough that I heard him. He
2 was facing the jury.

3 I will also note that throughout this
4 trial Mr. Villa and Ms. Fox-Young are constantly
5 talking to each other and laughing while witnesses
6 are testifying, and commenting on the evidence to
7 each other, shaking their heads. And I let it go
8 because, I think, unlike the other attorneys, who
9 are very stoic and professional, I think that plays
10 with the jury. Maybe the jury is noticing that, as
11 well.

12 But I think this crosses the line, because
13 he's complaining about people in the back of the
14 courtroom, and he himself is making comments in
15 front of the jury about our witnesses.

16 THE COURT: Well, certainly, don't do
17 that. I mean, I can't comment -- it's not on the
18 record and I didn't see it. But don't comment on
19 the evidence in a loud enough voice so that the jury
20 can hear it.

21 All right.

22 MR. VILLA: I haven't, Your Honor. But I
23 understand.

24 THE COURT: Make sure we don't have extra
25 stuff going to the jury, because we're going to be

1 telling them to exclude everything they didn't see
2 in the courtroom. But we don't need to be adding
3 stuff that doesn't show up on the record.

4 Let me get Mr. Lowry here.

5 MR. LOWRY: Your Honor, before we actually
6 admit this exhibit, we'd like to voir dire the
7 witness just to see if he's familiar with Mr.
8 Baca's -- with the exhibit at all.

9 THE COURT: All right.

10 MR. BECK: And your Honor, I don't think
11 our argument was that necessarily this fits into a
12 hearsay exception. It's a nonhearsay -- it's
13 offered for a nonhearsay purpose, which is the
14 establishment of the criminal enterprise. The
15 United States -- the first element that the United
16 States has to prove is that the SNM is an
17 enterprise; included within that is that it has a
18 certain structure. So this document talks about the
19 responsibility of an SNM member --

20 THE COURT: How would that be a nonhearsay
21 purpose? I mean, that's --

22 MR. BECK: Just like --

23 THE COURT: It's for the truth of the
24 matter.

25 MR. BECK: It's just like offering a

1 contract that is hearsay. But when you offer it in
2 a civil case to prove that the contract existed, and
3 it was signed, it's offered for a nonhearsay
4 purpose. Your Honor has written on this before
5 several times, offering a document for a nonhearsay
6 purpose when it goes to a legal element that's
7 required to establish the case. And in this case
8 we're required to establish that an enterprise
9 existed. Within that is that it had a structure.
10 There is an requirement for an enterprise under the
11 RICO statute. And it's not just -- it's not just
12 that there was an SNM Gang. It's that it had a
13 certain structure in place.

14 So this, talking about what the
15 responsibilities of a member are -- become familiar
16 with the counties, to become familiar with the
17 street gangs -- goes to that structure. So it is
18 offered for a nonhearsay purpose. And so maybe a
19 limiting instruction may be that it goes towards
20 establishment of the enterprise. That may be a
21 proper instruction, and in that case it goes against
22 all the defendants. So it may warrant some type of
23 limiting instruction, but it should be admitted
24 against all defendants because it is being offered
25 for a proper nonhearsay purpose.

1 THE COURT: Well, I'll think about it.
2 Let me listen a little bit more.

3 MR. BECK: I'll see if I can find
4 something.

5 MR. LOWRY: Your Honor, can I respond to
6 that just briefly?

7 THE COURT: Yeah, I think we've got time.
8 Go ahead.

9 MR. LOWRY: These alleged musings, these
10 writings, there is no -- unlike a written contract
11 that has been signed by everybody involved, there is
12 no indication whatsoever that anybody other than the
13 author of that document adopted its philosophical
14 purpose. So I find it very difficult to attribute
15 one writing to all of the alleged members of this
16 organization. I don't think it really goes to the
17 enterprise element. It's, as the Court pointed out,
18 a substantive leap into the truth of the matter
19 asserted, and there is absolutely no evidence that
20 that writing has been adopted by anyone. So I think
21 that's pushing the contract analogy beyond the
22 breaking point for the purpose of this exhibit.

23 THE COURT: Well, if you had -- I'm not
24 sure what this document is. But if we likened it to
25 bylaws or articles of incorporation of a corporation

1 or an entity, that would probably be a nonhearsay
2 purpose. It would just be these are what they are.

3 MR. LOWRY: That's what I'm saying. There
4 is no evidence that --

5 THE COURT: Well, that's the reason I may
6 need to listen and see what this document is a
7 little bit to see what it is.

8 Anybody else? We have a few minutes while
9 the jury is lining up.

10 Ms. Armijo.

11 MS. ARMIJO: Yes, Your Honor. And I am
12 going to -- and I told this yesterday to Mr. Baca's
13 defense attorneys, that Mr. Castellano previously
14 went over the bad acts of Mr. Baca, and specifically
15 we're talking about a bad act occurring on June 22,
16 1989? Yes.

17 MR. LOWRY: The Velasquez.

18 MS. ARMIJO: Yes. He murdered an inmate.
19 And previously Mr. Castellano indicated that if we
20 had more evidence of tying this to SNM, that we
21 would do so. And at this time we do, and with this
22 witness have more information that we are making the
23 argument that this bad act should come in.

24 MR. LOWRY: Your Honor, I'm going to
25 object to this. There have been no disclosures

1 whatsoever.

2 THE COURT: Well, approach before you try
3 to bring this up.

4 All right. All rise.

5 MR. LOWRY: Can we voir dire on the
6 handwriting?

7 THE COURT: You may.

8 MR. LOWRY: In front of the jury?

9 THE COURT: Well, is there any reason we
10 shouldn't?

11 MR. LOWRY: All right.

12 THE COURT: All right.

13 (The jury entered the courtroom.)

14 THE COURT: All right. Everyone be
15 seated.

16 All right. Mr. Lowry, you wanted to voir
17 dire the witness on Exhibit 223-A?

18 MR. LOWRY: Yes, I did, Your Honor. Thank
19 you.

20 MS. ARMIJO: He doesn't have it. I think
21 where we left off --

22 THE WITNESS: I know what it is. Sorayo.
23 Yes, I recognize it.

24

25

1 VOIR DIRE EXAMINATION

2 BY MR. LOWRY:

3 Q. Good morning, Mr. Rodriguez.

4 A. Good morning, sir.

5 Q. How are you doing?

6 A. All right.

7 Q. Has Anthony Baca ever written a letter to
8 you?

9 A. Written a letter to me?

10 Q. Right.

11 A. Not that I could recall. Now, are we
12 speaking of a letter directly to me or --

13 Q. Has he ever written anything to you?

14 A. Yes.

15 Q. So could you recognize his handwriting if
16 it was presented to you?

17 A. Yes, I think he has three different types
18 of handwriting. He has cursive, plain, and kind of
19 like a gangster one.

20 Q. How often have you seen it?

21 A. I've seen the cursive and the plain one.

22 Q. How often?

23 A. Pretty often. Well, he's written to me --
24 I read a lot of his writing while we were living in
25 X pod. And I read a lot of his appeals, his

1 motions, his contracts with administration, and
2 stuff like that.

3 Q. So you would review his legal paperwork in
4 the X pod?

5 A. Yes, because he's real smart with the law.
6 If we need help, he'll show us how to file appeals.
7 And we all write habeases and legal documents, our
8 disciplinary appeals, and we learn off each other,
9 and he's one of the smarter ones with the policy.

10 Q. Okay. So one time?

11 A. Maybe. I couldn't give you a number, but
12 I've seen his writing a lot. You can give me ten
13 different types of handwritings and I'll know
14 exactly which one is his.

15 Q. I'm asking how many times have you seen
16 his handwriting?

17 A. You want a specific number?

18 Q. Yes.

19 A. I can't give you that, but I can give you
20 about maybe 30 or 40. I've seen his handwriting a
21 lot.

22 MR. LOWRY: I have no further questions,
23 Your Honor.

24 THE COURT: Thank you, Mr. Lowry.

25 Ms. Armijo, if you wish to continue your

1 direct examination.

2 MS. ARMIJO: Yes. Thank you, Your Honor.

3 CONTINUED DIRECT EXAMINATION

4 BY MS. ARMIJO:

5 Q. All right. Mr. Rodriguez, I believe you
6 were -- before the break --

7 MS. ARMIJO: I'm going to move in at this
8 time Exhibit 223-A into evidence.

9 THE COURT: And I'm going to admit 223-A.
10 But ladies and gentlemen, it can only be used in
11 your consideration against -- for the charges
12 against Mr. Baca. It can't be used in any way as to
13 the other three defendants.

14 All right, Ms. Armijo.

15 (Government Exhibit 223-A admitted.)

16 MS. JACKS: And Your Honor, we'd request a
17 similar limiting instruction regarding testimony
18 about that document.

19 THE COURT: That's true. That's true.
20 You get the same instruction about what
21 Mr. Rodriguez is going to say about this document
22 and what Mr. Baca was saying in the document.

23 All right, Ms. Armijo.

24 BY MS. ARMIJO:

25 Q. Mr. Rodriguez, what are we looking at?

1 A. You're look at the top four rays, which is
2 called rayos of the Zia symbol, and a structural
3 format for the northern region based on the counties
4 of the northern state of New Mexico.

5 Q. All right. Now, are you familiar with who
6 wrote this document?

7 A. Yes.

8 Q. Who wrote this document?

9 A. Anthony Baca.

10 Q. Did he go over this document with you, or
11 the contents of this document, back when you were
12 housed with him?

13 A. Not this one in particular.

14 Q. Okay. Did he go over the basis of this
15 document?

16 A. Yes. I've seen the whole structure of it
17 and which county goes in what rayo, what the purpose
18 of it is. I know all the structure of this.

19 Q. Who do you know it from?

20 A. Anthony Baca.

21 Q. Do you recognize this writing to be his
22 writing?

23 A. Yes, ma'am.

24 Q. "His" being Anthony Baca?

25 A. Yes, ma'am.

1 Q. You mentioned the Zia symbol. What
2 significance does the Zia symbol have with the SNM?

3 A. It's the logo. It's the gang sign. It's
4 the sun with the S in the middle. And that's what
5 we all get on us.

6 Q. Now, what significance does -- and I'm
7 looking at Exhibit Number 223-A and it looks like at
8 the top of the page there is a half-circle and some
9 lines coming up.

10 A. Right.

11 Q. What significance is this?

12 A. The significance is to the northern
13 region. This is given -- say I'm from the north --
14 the east region, I would be given an outline just
15 like this, but faced toward the east, with a
16 breakdown, pretty much recruitment requirements, how
17 elections go. This is -- the top lines are the
18 northern rayos. Each rayo has a county in it, and
19 there would be members from each set. And there
20 would be a sergeant on the streets and a lieutenant
21 in the prison, and then there would be a captain
22 that's in all the directions.

23 Q. And what was the purpose of this?

24 A. To have each direction make things less
25 complicated, to -- the northern part of the Zia

1 could only be involved in the northern part of the
2 business. Me, being from the east rayo, could not
3 interfere with the north, the south, or the west.

4 Q. And why, again, would you be in the
5 eastern rayo?

6 A. Because my county was Grant County. I'm
7 bottom -- Number 1 rayo on the east side.

8 Q. And so whose structure was this?

9 A. This is Anthony Baca's.

10 Q. And did he discuss these plans with you?

11 A. Yes, ma'am.

12 Q. And were these plans discussed with other
13 SNM members?

14 A. Yes, ma'am.

15 Q. And what was Mr. Baca attempting to do
16 with these plans?

17 A. Build a stronger SNM, build a -- more
18 structured and more disciplined.

19 Q. And does this document set the structure
20 of the whole SNM, or at least the part for the
21 north, the whole SNM enterprise?

22 A. Pretty much for the northern region, yes.

23 Q. And would there have been an eastern
24 region and western region and a south region?

25 A. Yes, ma'am.

1 Q. And all of those would be the whole
2 structure of the SNM enterprise as Mr. Baca had
3 wanted it?

4 A. Yes, ma'am.

5 Q. Now, I'm going to show you Exhibit 753.

6 MS. ARMIJO: May I approach the witness?

7 THE COURT: You may.

8 BY MS. ARMIJO:

9 Q. Showing you Exhibit 753, I'm showing you
10 two documents. Are you familiar with those
11 documents?

12 A. Yes, ma'am.

13 Q. Who authored this?

14 A. I did.

15 Q. And in general, what is it?

16 A. It's the whole breakdown of the Zia based
17 on counties and the structure of SNM.

18 Q. Okay. And what is this based off of?

19 A. Off Anthony Baca's teachings.

20 Q. Did you, in fact, draw this?

21 A. Yes, ma'am.

22 Q. Recently, within the last week?

23 A. Yes, ma'am.

24 MS. ARMIJO: The United States would move
25 for the admission of 753.

1 THE COURT: Any objection?

2 MR. LOWRY: Yes, Your Honor. May we
3 approach on this?

4 THE COURT: You may.

5 (The following proceedings were held at
6 the bench.)

7 MR. LOWRY: I would object under the best
8 evidence rule. This isn't a representation of what
9 they have up on the screen in 223-A. This is
10 markedly different and decidedly more inculpatory,
11 if you will. I mean, he has agents all outside of
12 the rays of this, and he's claiming that these are
13 individuals assigned outside that have specific
14 duties, and none of that is in document 223. If he
15 wants to testify about what his understanding is,
16 that's one thing. But this document is highly
17 prejudicial and doesn't accurately reflect writings
18 that are on the screen.

19 THE COURT: If he were to come in and make
20 this chart up on the butcher block paper, how
21 different would it be?

22 MR. LOWRY: Well, I don't know, because I
23 don't know how this was created. It was just
24 disclosed to us.

25 THE COURT: Well, it's kind of a

1 demonstrative. It's just a chart that he's putting
2 together.

3 Anybody else have any thoughts on it?

4 MS. JACKS: On behalf of Mr. Sanchez and I
5 think other defendants, he's parroting what Mr. Baca
6 allegedly told him. So I would think this is
7 hearsay as to the other defendants and should be --
8 it's based on hearsay, and it should be limited to
9 Baca. I also don't know when this was turned over.
10 We were just debating about this.

11 MS. ARMIJO: It was this weekend.

12 MS. JACKS: Just in the past two days. So
13 it's something lately disclosed to the defendant.

14 THE COURT: Like I said, if he were to
15 stand up here and draw it on butcher block paper,
16 it's not a whole lot different.

17 MS. ARMIJO: And Your Honor, he's going to
18 testify to it. This is to help his testimony. And
19 as you can see, he's handcuffed, so it's kind of
20 difficult for him to be unhandcuffed and have him do
21 it.

22 THE COURT: But is he going to testify he
23 got all this information from Mr. Baca?

24 MS. ARMIJO: Yes.

25 MR. LOWRY: It's not been adopted by

1 anybody other than Mr. Baca.

2 THE COURT: That's the reason I think the
3 limiting instruction is appropriate. So I'll give
4 it as to everybody else. He's going to testify what
5 this is.

6 MS. ARMIJO: Can I ask him specifically if
7 anybody else was around during these discussions and
8 he's aware if he had discussions with any of these
9 defendants about this, just to be clear? I don't
10 know what his abilities are.

11 THE COURT: You need to keep it very
12 straight and very clean, though, because if somebody
13 gave one thing and somebody else -- I think you
14 probably better stick with "This is Baca's story,"
15 and not try to drag other people into it.

16 MR. BECK: Your Honor, I think the
17 testimony that he just gave was that this was the
18 structure of the SNM in New Mexico, not that it was
19 Mr. Baca's structure. It came from Mr. Baca, but it
20 was the structure of the SNM in New Mexico. So
21 we're offering this drawing just like we offered Mr.
22 Baca.

23 THE COURT: Get your stories straight,
24 because y'all aren't being very consistent here.
25 I'll admit it against Mr. Baca, but if it came from

1 Mr. Baca, it came from Mr. Baca, how the chart was
2 put together before I admit it. So you'll need to
3 lay a foundation, because the Government's attorneys
4 don't have their stories straight.

5 MS. ARMIJO: No, Your Honor.

6 THE COURT: Go back and lay a foundation.

7 MS. ARMIJO: It's the other --

8 THE COURT: Ms. Armijo.

9 MS. ARMIJO: It's the other item that I
10 was going to approach on. You told us to approach
11 before the bad act, and I'm approaching now. That
12 will be the next thing I go into.

13 THE COURT: What's this about?

14 MS. ARMIJO: You wanted me to mention it
15 before the jury came in, about the murder.

16 THE COURT: Talk to the witness about this
17 chart or a bad act.

18 MS. ARMIJO: I am. But right after that,
19 I'm going into the bad act.

20 THE COURT: Well, then, approach on the
21 bad act.

22 MS. ARMIJO: Okay. Thank you.

23 (The following proceedings were held in
24 open court.)

25 THE COURT: Ms. Armijo.

1 BY MS. ARMIJO:

2 Q. Mr. Rodriguez, I'll show you Exhibit 753.

3 A. Yes, ma'am.

4 Q. Are you familiar with that item?

5 A. Yes, ma'am.

6 Q. How so?

7 A. I learned it from Anthony Baca.

8 Q. When did you learn it from Anthony Baca?

9 A. 2011, when we were in X pod together. I
10 think I was in X1; he was in X12.

11 Q. And what is it of?

12 A. Structure of SNM.

13 Q. And so did you -- who composed this?

14 A. Anthony Baca.

15 Q. Okay. Who actually -- I'm not talking
16 about the contents of it, but who actually did the
17 physical drawing of it?

18 A. Oh, I did.

19 Q. And what was it based off of?

20 A. Based on my teachings -- my learnings from
21 Anthony Baca.

22 Q. Your learnings from what?

23 A. The SNM structure.

24 Q. Okay. And what does Exhibit 753
25 represent?

1 A. That's what 753 is?

2 Q. Yes, I'm sorry.

3 A. The SNM.

4 Q. The SNM what?

5 A. Structure.

6 Q. Okay. And what does it apply to -- and
7 when did you draw this?

8 A. I think it was on Saturday.

9 Q. Okay. And what -- and you indicated that
10 it's based upon what you found out in 2011?

11 A. Right.

12 Q. Okay. What did it represent back in 2011?

13 A. It was his desire to do -- he came back
14 from Nevada wanting to implement that, wanting to
15 build it up and strengthen the SNM from already what
16 it was.

17 Q. And so did -- is this -- does this
18 document have part of the same structure that we saw
19 previously in the exhibit that we just showed?

20 A. Yes, it has the northern region.

21 Q. And what does this capture?

22 A. What?

23 Q. Document 753.

24 A. What does it capture as a whole?

25 Q. Yes.

1 A. A more structured version of the SNM from
2 what it already was. So there was not no
3 complications of, like -- it's just to simplify it
4 and not have everyone in everyone's business.

5 Q. Okay. Was that a --

6 MS. ARMIJO: All right. The United States
7 would move for the admission of 753.

8 THE COURT: Do you wish to voir dire?

9 MR. LOWRY: Yes, I do, Your Honor.

10 THE COURT: All right, Mr. Lowry.

11 VOIR DIRE EXAMINATION

12 BY MR. LOWRY:

13 Q. Mr. Rodriguez?

14 A. Yes, sir.

15 Q. I believe you just said that at least with
16 document 223-A --

17 A. Which one is that one?

18 Q. The first one.

19 A. Okay.

20 Q. -- that that was Mr. Baca's desire; you
21 used the word "desire."

22 A. Exactly.

23 Q. And then you said that's something he
24 wanted to implement?

25 A. Right.

1 Q. That never really happened, did it?

2 A. It begun -- the northern region was the
3 most -- that region that you showed on the first one
4 was the one most structured at the time. The rest
5 were in process of being implemented.

6 Q. Who implemented it?

7 A. Pup.

8 Q. Okay.

9 A. Anthony Baca.

10 Q. What do you mean? How did it get
11 implemented?

12 A. Okay. You have to go -- well, first, you
13 have to have those individuals buy in. I fully
14 bought into the structure. And the northern region
15 fully bought in. Espanola is a hub for SNM. That's
16 why it was so structured. You have to vote in the
17 person who was going to lead that. And when he was
18 in Southern Correctional Facility, right here in Las
19 Cruces, he was around the majority of the Espanola
20 guys, and they began with the upstart of it on the
21 northern region. They had the most structure, and
22 began getting us who are on the other sides buying
23 in. So me buying in, I'm on the side with Valencia
24 County, Bernalillo, and my county is a smaller
25 county. We have a lot of SNMers from that area. So

1 we have to get together as that region, and we have
2 to vote the person in there that we're willing to
3 follow. Because he didn't want it to be a version
4 of: I'm going to choose this person and you guys
5 have to follow him. That's going to cause problems.
6 He wanted us as individuals to say "Who do you
7 respect?"

8 So okay. There is a consensus, five of
9 you respect this guy; one says he's willing to
10 follow, he doesn't really like him; but the majority
11 wins, and he's the leader. So we're willing to
12 follow that person.

13 MR. LOWRY: Can we pull up 223-A?

14 THE COURT: I'm sorry, Mr. Lowry?

15 MR. LOWRY: Can we pull up 223-A?

16 BY MR. LOWRY:

17 Q. So you don't think this was wishful
18 thinking?

19 A. No, not at all.

20 Q. Okay. So who was responsible for San
21 Juan, McKinley County, and Sandoval?

22 A. The people responsible for this whole
23 rayo, there wasn't that many people from San Juan,
24 McKinley, and Sandoval.

25 Q. My question is who?

1 A. I don't know. I don't know. That
2 wouldn't be my direction to find out.

3 Q. Who was responsible for Rio Arriba?

4 A. I do not know.

5 Q. Who was responsible for Taos?

6 A. What is Espanola County?

7 Q. Espanola County? There is no Espanola
8 County.

9 A. It's in the northern region. I think it's
10 San Miguel. Okay. Go ahead.

11 Q. Okay. So you don't know who was
12 responsible for San Juan?

13 A. No.

14 Q. You don't know who was responsible for
15 McKinley?

16 A. No.

17 Q. You don't know who was responsible for
18 Sandoval?

19 A. No, not Sandoval.

20 Q. And you don't know who is responsible for
21 Rio Arriba?

22 A. No.

23 Q. You don't know who is responsible for Los
24 Alamos?

25 A. You're not talking about the northern --

1 oh, no, I do not. I know who is responsible for
2 Santa Fe.

3 Q. Do you know who is responsible for Taos?

4 A. No.

5 Q. Okay. Who is responsible for Santa Fe?

6 A. Daniel Archuleta, Smurf.

7 Q. Who is responsible for San Miguel?

8 A. No one.

9 Q. Who is responsible for Mora?

10 A. No one.

11 Q. Who is responsible for Colfax?

12 A. No one. The hub for SNM in the northern
13 region is Espanola and Santa Fe. So they would
14 control all four directions, all four rayos.

15 Q. So you said there was one individual
16 responsible for --

17 A. All four of those.

18 Q. And that individual's name was --

19 A. Smurf, Daniel Archuleta.

20 Q. Who voted him in?

21 A. The Espanola guys.

22 Q. Who are they?

23 A. I'm not -- okay, it would be Larry
24 Martinez, Psycho. It would be Swamp, Leroy Romero.
25 Tono Martinez. Mono -- I don't know his real name.

1 I know Daniel Archuleta was there at the time. And
2 one other individual. I don't recall his name.
3 There's pictures in the discovery of them.

4 Q. And that brings me back to a point.
5 That's one of the reasons you know so much about
6 this is because all of this was in discovery on your
7 tablet?

8 A. These are my carnals. I know them.

9 Q. Right, but you had access --

10 A. Yeah, I seen the pictures in the
11 discovery.

12 Q. You have had that for years to study?

13 A. For two years, yeah.

14 Q. And after two years of study, you can't
15 tell us who represented any of these other rayos?

16 A. There is no carnals for me in the rayos.

17 THE COURT: Ms. Armijo, do you have a copy
18 of this document for me, for the Court?

19 I wasn't trying to cut you off, Mr. Lowry.

20 MS. ARMIJO: 223-A or --

21 THE COURT: 753.

22 MS. ARMIJO: I'll give you the original.

23 THE COURT: Is that a copy the Court can
24 use, or is that --

25 MS. ARMIJO: I will get a copy for the

1 Court to use. This is the original.

2 THE COURT: Do you have a copy, then, for
3 the witness?

4 MS. ARMIJO: Yes, we do, so the Court can
5 use this.

6 THE COURT: Let me make a copy. Why don't
7 you make a copy real quick so I don't --

8 MS. ARMIJO: Oh, Your Honor, we do have a
9 copy. I'm sorry.

10 THE COURT: Why don't you hand that back
11 to them, then. Was it a two-page -- oh, it's front
12 and back?

13 MS. ARMIJO: Yes.

14 BY MR. LOWRY:

15 Q. Mr. Rodriguez, with regard to Exhibit
16 753 --

17 A. Which one is that one?

18 Q. I believe --

19 A. Oh, yeah. That's the one I drew, yes.

20 Q. When did you draw this?

21 A. On Saturday.

22 Q. And who asked you to draw it?

23 A. Nobody. I drew it myself. I brought it
24 up that I knew the thing, and I think they asked me
25 if I could draw it. I don't remember who.

1 Q. Where were you sitting when you drew it?

2 A. In my cell.

3 Q. And you drew it by yourself?

4 A. Yes, through memory. Some of the rayos on
5 the bottom, on the Dona Ana area, because I didn't
6 have the map of New Mexico, so that's all from
7 memory right there.

8 Q. So you said you had a conversation with
9 the United States about whether you --

10 A. Prior to drawing it, yes.

11 Q. Who did you have that conversation with?

12 A. I think it was the prosecution.

13 Q. Okay. Who? Which one?

14 A. I think it may have been Mr. Castellano or
15 Maria. I just told them I knew the whole -- when I
16 seen that picture of the northern area, I told them
17 I knew the whole layout, and they asked me to do it.

18 Q. But you've seen that picture of the
19 northern area for --

20 A. Since 2011.

21 Q. But I mean, on the tablet you've had it
22 since 2016?

23 A. Yeah, 2016 -- no, 2015; right?

24 Q. 2015?

25 A. Yes.

1 Q. And that conversation never happened until
2 last week?

3 A. Right.

4 Q. Was anybody else in the room when you had
5 that conversation with --

6 A. Probably I think it might have been a
7 couple officers, maybe.

8 Q. And by "officers," you mean correctional
9 officers?

10 A. Correctional officers.

11 Q. Did this conversation happen at the Level
12 6 facility?

13 A. No. I've been in Santa Fe -- I mean, I've
14 been in Cruces.

15 Q. In Las Cruces?

16 A. Yes.

17 Q. At the Southern facility; right?

18 MS. ARMIJO: Your Honor --

19 MR. LOWRY: Pardon me.

20 BY MR. LOWRY:

21 Q. Inside a correctional facility?

22 A. Yes.

23 MR. LOWRY: No further questions, Your
24 Honor.

25 THE COURT: All right. Thank you, Mr.

1 Lowry.

2 Anybody else?

3 MS. JACKS: Your Honor, I think we made
4 our objections at the bench. It was my
5 understanding the Court was going to limit the
6 exhibit.

7 MR. LOWRY: Your Honor, may we approach
8 very quickly?

9 THE COURT: Yeah. Hold on. Let me see if
10 I can read this on the back of the exhibit.

11 All right. Why don't y'all approach?

12 (The following proceedings were held at
13 the bench.)

14 THE COURT: I'm having trouble reading the
15 back of this, but I guess I don't understand how
16 this reflects Baca's plans. If it's a description
17 of where things were at the time, explain to me how
18 these are -- how this document reflects Baca's
19 plans.

20 MS. ARMIJO: This one, as Mr. Rodriguez
21 will testify, this is based on his conversations
22 with Mr. Baca, the structure that Mr. Baca -- when
23 coming back from out of state to get everything
24 organized with the SNM. I think we've already heard
25 from other members as to when he came back, he

1 wanted more regimen and people to exercise more and
2 everything. This is part of his plan.

3 THE COURT: Well, just explain it to me.
4 For example, just pick something here, Valencia,
5 Cibola, how does that reflect Mr. Baca's plan?

6 MS. ARMIJO: Mr. Baca's plan wanted
7 different representation, like this says "sergeant."
8 So he wanted a sergeant from Valencia and Cibola.
9 So the different areas, he was wanting to assign a
10 sergeant to the different areas.

11 And then I believe he said there would be
12 an overlap, four captains, with him in the middle,
13 and then sergeants, representatives from the
14 different areas. So you have the members, and you'd
15 have the sergeants from each of the areas
16 represented, and then you would have the captains.
17 I believe he previously testified to that.

18 THE COURT: Well, if you think this is
19 going to be Baca's plans -- and I believe he said
20 that Baca followed through on some of them -- why
21 isn't this going to be an 803-3 issue of Mr. Baca's
22 then-existing state of mind such as motive, intent
23 or plan? So that it's got a nonhearsay purpose, and
24 I should not give a limiting instruction here.

25 MR. LOWRY: Your Honor, there is no

1 evidence that this was his state of mind. All of
2 these comments on this are not Mr. Baca's. They're
3 Mr. Rodriguez'. And there is no evidence whatsoever
4 that any of this notion were ever carried out, none.
5 This is --

6 THE COURT: I thought he testified just a
7 moment ago that some of them were. I don't know if
8 it's true or not. That's not for me to decide. But
9 his testimony is that these are his plans. And I
10 guess I understand better now the chart. It seems
11 to me it's got an 803-3 purpose, not Mr. Baca's
12 plans or motive. I'm not seeing the basis for a
13 limiting instruction.

14 MR. LOWRY: There is no evidence. If you
15 eliminate the limiting instruction, Your Honor, what
16 you're saying is this comes in as substantive
17 enterprise evidence. But there is, again -- there
18 is no evidence whatsoever. Well, he did testify
19 that he can't name, other than one person, a single
20 person that purportedly bought into this plan.
21 And --

22 THE COURT: That's not necessary for his
23 state of mind. Here's what I'm going to do: I'm
24 going to admit it, but I'm not going to give a
25 limiting instruction.

1 MR. LOWRY: Could we at least limit it to
2 the face page, because none of this -- this is
3 highly prejudicial on page 2. It's talking about --

4 THE COURT: What is on page 2? I am
5 having a hard time reading it.

6 MR. LOWRY: I am, too, Your Honor.

7 THE COURT: Are you going to elicit any
8 testimony on page 2?

9 MS. ARMIJO: Page 2 represents a lot of
10 it.

11 THE COURT: Represents what?

12 MS. ARMIJO: It's an explanation of the
13 map.

14 THE COURT: Represents what?

15 MS. ARMIJO: The map, it talks about --
16 and I think I would be eliciting testimony --
17 elections every four years. He talks about north,
18 south, east, west, captain, and explanation how the
19 captains come together and everything. So yes, I
20 would be. And it also represents with the dot
21 inside --

22 THE COURT: And all of this came from Mr.
23 Baca?

24 MS. ARMIJO: Yes.

25 MS. DUNCAN: Your Honor, if I could be

1 heard on this. These are Mr. Rodriguez' statements.
2 He can testify what Mr. Baca said, but this is
3 essentially a 302 that they're trying to introduce
4 of Mr. Rodriguez.

5 THE COURT: If you want to voir dire some
6 more on it, you can. But right at the moment it's
7 all Mr. Baca's.

8 MS. DUNCAN: That's not my point. I
9 understand what he's saying. What I'm saying is:
10 The notes on the back is a summary of what Mr.
11 Rodriguez is testifying to, so it's essentially the
12 Government trying to bring in a 302 of the
13 statements in the past. So this is similar just to
14 getting up and drawing on the white board. One
15 thing -- they're not just using it for that purpose;
16 they're trying to bring in Mr. Rodriguez' statement,
17 memorialize it, and give it to the jury. That's
18 improper. Even if the Court is inclined to bring in
19 the demonstrative diagram to talk about Mr. Baca's
20 statements or plan, it should not admit page 2.
21 It's a police report, essentially, of a witness
22 statement. He can testify to it, but it shouldn't
23 be memorialized and given to the jury as an exhibit.

24 THE COURT: Well, I'm going to admit it
25 and without a limiting instruction at the present

1 time.

2 MS. BHALLA: Just for the record, I think
3 that we want to note that we object and believe a
4 limiting instruction as to Mr. Herrera especially,
5 because it doesn't appear that he knew who were
6 supposed to be leaders. And the implication is that
7 the other people in the courtroom may have been in
8 leadership positions based on that document. And I
9 think that during the voir dire, what came out is he
10 doesn't know. And I think that it's unfair for that
11 inference to be drawn that our clients are
12 implicated in that, when Mr. Rodriguez doesn't know.

13 THE COURT: I think this is my copy, isn't
14 it? Is this the original?

15 MR. BECK: I think that's probably the
16 original.

17 MS. ARMIJO: That's a copy.

18 MS. JACKS: For the record, Your Honor,
19 Defendant Sanchez also joins in that objection.

20 THE COURT: Well, if in your cross, you
21 know, you can establish what -- something that's
22 different than what I'm seeing, I can give a
23 limiting instruction at that time. Right at the
24 moment, it seems to me that it comes in as Mr.
25 Baca's state of mind. But I'll listen and y'all can

1 re-approach.

2 MS. BHALLA: Okay. Thank you, Your Honor.

3 MS. JACKS: May I be heard? I think if
4 it's going to come in as evidence of Mr. Baca's
5 state of mind, then the jury should be instructed as
6 to that, if it's Mr. Baca's state of mind.

7 THE COURT: We don't normally explain
8 hearsay exceptions to them.

9 MS. JACKS: I mean, if it's coming in to
10 show the state of mind, that is a limited purpose,
11 not substantive.

12 THE COURT: Not on 803-3. It's just an
13 exception. You can re-approach.

14 (The following proceedings were held in
15 open court.)

16 THE COURT: All right. The Court will
17 admit Government's Exhibit 753 into evidence.

18 (Government Exhibit 753 admitted.)

19 MS. ARMIJO: All right. We will be
20 showing Exhibit 753.

21 CONTINUED DIRECT EXAMINATION

22 BY MS. ARMIJO:

23 Q. Mr. Rodriguez, what is it that we're
24 looking at?

25 A. The breakdown of the SNM structure.

1 Q. Okay. And I believe we've already heard
2 testimony that you -- that this is actually your
3 drawing; is that correct?

4 A. Yes, ma'am.

5 Q. Okay. And what did you base it off of,
6 again?

7 A. Off of what I learned from Pup, Anthony
8 Baca.

9 Q. Okay. Can you please -- and I'm going to
10 first ask that the top half be focused in on.

11 (Cellphone interruption.)

12 THE COURT: That's very happy.

13 Q. All right. Mr. Rodriguez, what is it that
14 we're looking at?

15 A. The top northern part of Zia symbol.

16 Q. Okay. And I'm going to point out a couple
17 of different things. You have numbers here 1, 2, 3
18 and 4?

19 A. Right.

20 Q. What do those represent?

21 A. Each rayo, just clockwise, the rayos that
22 these are.

23 Q. Okay. And then you have -- I'm just going
24 to use this one as an example.

25 A. Right.

1 Q. I drew what looks like a footprint on
2 Exhibit 753, the top northern rayo, labeled Number
3 1; is that correct?

4 A. Yes, ma'am.

5 Q. What is the first part up here that says
6 "STG" and there is a dot?

7 A. That would be a sergeant on the streets.

8 Q. Okay. And then what do you have written
9 down below that? What does that represent?

10 A. That's -- the counties? Or in the dot in
11 the rayo?

12 Q. I'm sorry. Underneath where it says
13 "sergeant."

14 A. Those are the counties. And if there was
15 SNMers from that area, they would choose that SNMer
16 to be a sergeant of that area.

17 Q. So this is talking about out on the
18 street?

19 A. Yes. Any dot outside of Zia is the
20 streets.

21 Q. Okay. And there is a sergeant outside on
22 the -- let me clear this up a little bit.

23 Oh, thank you, Ms. Standridge.

24 Okay. And then what does this mean in
25 here? And I'm focusing to the rayo that says Number

1 1, and I circled the top part of it. There is a dot
2 there.

3 A. That would be the individual elected to be
4 the lieutenant inside the prison of that direction.

5 Q. So are the rayos -- so you have number 1,
6 a lieutenant inside?

7 A. Right, of San Juan, McKinley, and
8 Sandoval. If there was carnals from that area, he
9 would be the lieutenant who reported to the captain
10 and to Pup based on that area.

11 Q. Okay. Now, I'm going to kind of draw a
12 line here. You have a dot on the inner circle that
13 says CPT. What does that represent?

14 A. That would be a captain.

15 Q. Okay. And how many captains are there?

16 A. Four.

17 Q. And from what areas?

18 A. Okay --

19 Q. I mean in general, do the four areas --

20 A. There are just four captains, and they
21 report to Pup.

22 Q. Okay. And are each of the captains from
23 the north, south, east, and west?

24 A. Yes.

25 Q. And is that how you have it written on

1 Exhibit Number 753?

2 A. Yes. That captain would be in charge of
3 all three of those rayos in the north.

4 Q. I'm just going to draw here -- I drew on
5 753, the top part of it, that says "captain." So
6 would the captain then be in charge of all this area
7 that I have encircled, which would be the four
8 inside lieutenants and then the sergeants on the
9 streets?

10 A. Right.

11 Q. All right. And then if we can now go
12 towards the middle section. Focus in on it. Okay.
13 Maybe a little bit smaller. I'm sorry. That was
14 too much. Let me just look at it normal again. I'm
15 sorry. There we go. Okay.

16 Now, I'm looking at the middle section and
17 I believe now we can see it encircling the whole
18 thing. Now we can see that there's four captains;
19 is that correct?

20 A. Yes, ma'am.

21 Q. Who do the captains report to?

22 A. Pup.

23 Q. And is that what you have in the middle of
24 the Zia?

25 A. Yes, ma'am.

1 Q. And then going to each side, I believe you
2 indicated that you would have been on the eastern?

3 A. Yes.

4 Q. Okay.

5 A. Yeah, the western.

6 Q. Western, I'm sorry.

7 A. The Grant, Sierra, Catron, on the second
8 rayo right there.

9 Q. So this would have been where you were?

10 A. Yes, ma'am.

11 Q. Okay. And so then you have other areas
12 there that are on the eastern part of the state, as
13 you best recollect?

14 A. Yes.

15 Q. And I believe you have -- and the western
16 part is set up the same way? You have a sergeant
17 out on the street to cover each of them?

18 A. It's all an election process.

19 Q. Election by whom?

20 A. Election by individuals from that
21 direction. So me being from Grant County, we from
22 Grant County and anyone from Catron or Sierra would
23 come together and say, "Who do we want to lead us?"

24 And we would approve that, and then that
25 person would be an LT. He would appoint the

1 sergeant on the streets.

2 Q. Okay. And that was going to be my
3 question. How does the sergeant get appointed?

4 A. That's the LT, because he needs someone
5 that's going to go forth with his -- like his
6 right-hand man.

7 Q. Now, some of these rayos only have, like,
8 one. I see that Bernalillo just has one, and Dona
9 Ana just has one, as opposed to some of the others
10 that have three. Why is that?

11 A. Because they're bigger counties. And
12 there's more SNMers from those areas.

13 Q. Now, I believe when Mr. Lowry was asking
14 you questions, you indicated that the southern part
15 of this was already getting into --

16 A. Northern.

17 Q. I'm sorry?

18 A. The northern.

19 Q. Oh, the northern part. I'm sorry. The
20 northern part was already getting into -- already
21 being put into play?

22 A. I think it was put -- more simply put into
23 place there because there was a smaller pool of
24 SNMers from Espanola. And from all these areas like
25 Bernalillo, Valencia, Grant County, you've got a lot

1 of SNM members. So you have to get -- you have to
2 reach all them guys. He was in Southern with most
3 of the Espanola guys, so he was able to get them on
4 board with it.

5 Q. Okay. Now, then, let's see. Going to the
6 eastern part of the state, is it set up the same
7 way?

8 A. Yes.

9 Q. Okay.

10 A. It's set up so that when Mr. Lowry was
11 asking me about the northern area, the issue with --
12 say if there was a carnal from Rio Arriba, I
13 wouldn't know his position, because that's not my
14 business. The whole thing is that the only people
15 that interfere with all four directions is Pup. I
16 can't be from the western side and interfere with
17 the northern side. That's not my direction. They
18 have to recruit the SNMers, because I didn't grow up
19 in those areas.

20 MR. LOWRY: Your Honor, can we object to
21 this line of questioning? It verges on expert
22 testimony, 701. No factual basis.

23 THE COURT: Well, lay a foundation. If it
24 all came from Mr. Baca, that's one thing. But if
25 it's something else, you probably need to make it

1 clear as to where the information is coming from.

2 BY MS. ARMIJO:

3 Q. Where did this information that you're
4 testifying to come from?

5 A. From Anthony Baca. Like I said, I bought
6 in fully to this. When he started teaching me this
7 stuff and the culture of New Mexico, I bought in
8 fully.

9 Q. Okay. Now, so you would not, as being
10 from the western part of it, have anything to do
11 with the other three sets of rayos?

12 A. No.

13 Q. Would you have anything to do -- I believe
14 that you would be, you said, on the second --

15 A. Right.

16 Q. -- rayo? On the western part of the
17 state. Would you have anything to do, then, with 1,
18 3 or 4 of the western part of the state?

19 A. If I was a captain, yes. But not if I'm
20 just the LT in that direction.

21 Q. Did Mr. Baca indicate anything as far
22 as -- so what do the dots represent? I'm sorry.
23 Let me ask you this.

24 A. Individual SNM members.

25 Q. And is there anything as far as the

1 election part of it?

2 A. The election part of it is that you go for
3 election every four years. So whoever you elect --
4 he says whoever you elect, make sure you're ready to
5 follow them, because you can't go for reelection
6 for -- after the four years. So they're there for
7 four years.

8 Q. Okay. And do you know -- and you may not
9 know -- could they be reelected?

10 A. Yes.

11 Q. And so you'd already indicated nobody gets
12 involved on other people's rays?

13 A. Right.

14 Q. What about -- how, if any, if you know,
15 does politicking or any sort of thing that's going
16 on out on the streets come into play with this?

17 A. This was to pretty much prevent that from
18 happening in other directions. If you got involved
19 in southern politics from the northern area, you
20 were going to get in trouble; you had a violation
21 coming. That's not your direction to be getting
22 into those guys' areas and telling them, "Why do you
23 elect this guy?" They can't do it.

24 Q. Okay. So what was going to happen with
25 this?

1 A. You would have -- what was happening with
2 what?

3 Q. With this structure. What was going to
4 happen?

5 A. It was going to be a more simple and more
6 refined SNM. Say Pup has an issue going on in the
7 northern region, all the SNM members are known from
8 up there. So if there is a hit to take place,
9 they're pretty much who's going to look after it.
10 So he would get someone from the eastern, western,
11 the south to form a hit team to go up north and take
12 out huevos and leave, so you're not known.

13 MR. LOWRY: I object to this line of
14 questioning and the answer. There is no evidence
15 whatsoever that any hits ever took place under this
16 plan or this ever was implemented by anybody, other
17 than imagination.

18 THE COURT: Why don't you try to -- as you
19 were doing earlier, I think he indicated that some
20 things were implemented and others were not.

21 A. I think I said "if" there is any hits that
22 needed to be done.

23 BY MS. ARMIJO:

24 Q. Okay. And so let me just be clear. What
25 you're talking about is a plan that was to be used

1 and implemented if there was something to be done?

2 A. Right. Drug distribution. Say someone
3 from the eastern rayos are doing good on drugs, he
4 would connect two individuals on the east and the
5 west, and they would work together to pretty much
6 lock down the whole state.

7 THE COURT: Just have the witness, in the
8 testimony, make it clear what is a plan, and then if
9 it actually came about, then we may need to separate
10 it out so that people can make objections to that.

11 Q. And again, just to be clear, was this the
12 plan?

13 A. This was the plan.

14 Q. And you indicated that you bought into it.

15 A. Bought in fully.

16 Q. Fully?

17 A. Fully. I was 100 percent in. I was
18 willing to take a backseat to anyone who was able to
19 lead the ride in the right way and leave my politics
20 out of it. If I didn't like you but you were
21 leading us right, I would take a backseat because I
22 wanted this to work.

23 Q. Okay. And so now also in 2011, during the
24 time that you were talking with Mr. Baca and learned
25 this -- hold on. Let me go on. I believe I wanted

1 to clarify a couple of things. I believe you
2 earlier testified about your 2009 incident --

3 A. 2008.

4 Q. -- 2008 incident regarding how you were
5 burned on the drug activity?

6 A. Robert Esparza?

7 Q. Yes. What sort of drugs were involved?

8 A. Heroin, marijuana, and I think some
9 cocaine.

10 Q. And what was your involvement in that as
11 far as -- were you using drugs or were you selling
12 drugs?

13 A. I was using and selling.

14 Q. And who were you selling to?

15 A. To Robert Esparza and other -- I think he
16 had a homie named Biaso, and just whoever would ask
17 for it, you're looking for it, we had it.

18 Q. Okay. And then the other thing I wanted
19 to clear up, the 2011 incident, you indicated that
20 with Mr. Sosoya, you indicated that you bypassed the
21 strip searches?

22 A. Right.

23 Q. What did you mean by that?

24 A. I hid my weapon so that the officer
25 wouldn't see it. I was -- we would come out of our

1 cell one at a time and go to the strip cage. The
2 strip cage door is open and the officer watches the
3 strip. We proceed to get naked, and I had a knee
4 brace with an ace bandage under it. I got my weapon
5 and strapped it to my leg, to where it was pretty
6 much a part of my body. I put the knee brace over
7 it. And when they asked me to lift up my knee
8 brace, I lifted it up, and that was it, and I go out
9 to the yard.

10 Q. You also indicated, I believe, that you
11 were possibly doing some studying at some time.

12 A. Right.

13 Q. What were you talking about then?

14 A. When I joined the SNM, a day for chow, the
15 COs are passing out chow, I think it was probably a
16 lunch, he slides in a manila envelope about that
17 thick, and it was from Arturo Garcia. I proceeded
18 to read it. It was Stoicism from Seneca, Marcus
19 Aurelius' personal journals, leadership qualities,
20 Art of War by Sun Tzu; Robert Green, anything by
21 Robert Green. Anything and everything to prepare
22 your mind to be a better soldier, a better SNM
23 member.

24 Q. And is this something that you did? You
25 read all those books?

1 A. Read it. I devoured it. It was all
2 handwritten personal excerpts taken out of one book
3 and twisted to turn into a belief of SNM. We'll
4 take an excerpt, we'll take a paragraph, and we'll
5 maybe switch a couple words, and it will be
6 implementing the SNM to train your mind.

7 Q. Now, and I believe you also were talking
8 about -- when Mr. Lowry was asking you questions,
9 that you indicated you were familiar with Mr. Baca's
10 writings. You were talking about -- I believe you
11 indicated something about "we all write appeals and
12 that." Can you explain that to the jury?

13 A. So say I get a disciplinary report. I get
14 locked down. I'll defend myself, then I'll appeal
15 it to the Department of Corrections to try to beat
16 it.

17 If I'm in protective solitary confinement,
18 I'll write an appeal and a formal complaint and it
19 goes to a grievance. Then I turn it into a habeas
20 corpus to go to the streets to get out of Level 6
21 sooner. To the administration, if you have issues
22 going on where you feel you're locked down for the
23 wrong reasons, you file appeals.

24 Q. Okay. And is that something that is
25 expected of you as an SNM Gang member?

1 A. Not expected, but for those of us who want
2 out of Level 6, we try everything to get out, you
3 know. And some of us help each other, you know.
4 The ones that are good at it, we will help write
5 their appeals and try to get each other out, try to
6 get each other to beat the reports.

7 Q. Now, I believe you already mentioned that
8 you knew Daniel Sanchez; is that correct?

9 A. Yes, ma'am.

10 Q. All right. And what year did you meet
11 him?

12 A. I think it was 2007, 2008, around there --
13 no, 2006, 2007.

14 Q. And what was his position with the SNM?

15 A. At that time I know he was going to be a
16 replacement for Arturo Garcia on the tabla. Arturo
17 Garcia on the tabla -- there were rumors they were
18 going to get sent out of state, to Hawaii. So he
19 was Arturo's right-hand man.

20 Q. What did you think of Mr. Sanchez?

21 A. I liked him. I looked up to him. He was
22 someone that encouraged me to speak up when things
23 were going wrong. He was somebody to uplift you and
24 treat you right.

25 Q. Now, did you have conversations with him

1 in reference to an incident that occurred after you
2 had met him, that occurred previously?

3 A. Yes, ma'am.

4 Q. Okay.

5 MS. ARMIJO: And if I just may have a
6 moment?

7 THE COURT: You may.

8 BY MS. ARMIJO:

9 Q. Now, you were housed with him initially
10 where?

11 A. In the North facility.

12 Q. And do you recall approximately how long
13 you were housed with him at the North facility?

14 A. I've lived with him throughout the years
15 in the Level 6 when -- we lived in the same pod
16 together for maybe a year. But we'd see each other
17 in the yard, the Level 6 yard.

18 Q. Then I'm going to fast-forward. You
19 indicated that you moved to Southern in late 2013,
20 approximately?

21 A. Around December.

22 Q. And was he there at that time?

23 A. Yes, ma'am.

24 Q. And where was he in relationship to where
25 you were when you moved to Southern?

1 A. Like where did he live?

2 Q. Was he in the same pod or the same
3 building?

4 A. I showed up to 1-A blue pod. He was in
5 that pod on the top tier.

6 Q. Okay. So in the same pod?

7 A. Yes, ma'am.

8 Q. All right. When you met Mr. Sanchez, did
9 he have -- did you learn about an incident that had
10 happened with him?

11 A. Yes, ma'am.

12 Q. Previous to your meeting him?

13 A. Yes, ma'am.

14 Q. And how did you learn of the incident?

15 A. We spoke about it, he and I.

16 Q. And what did he tell you about it?

17 A. That he had stabbed a Sureno because the
18 Sureno had stabbed one of our carnals in the Hobbs
19 facility.

20 MR. LOWRY: Your Honor, can we get a
21 limiting instruction on this?

22 THE COURT: All right. These are comments
23 that can only be used -- or evidence that can only
24 be used against Mr. Sanchez and cannot be used
25 against the other three defendants.

1 All right. Ms. Armijo.

2 MS. ARMIJO: All right.

3 BY MS. ARMIJO:

4 Q. And you indicated this happened where?

5 A. At the South facility, Level 5.

6 Q. And you indicated that he stabbed what
7 gang member?

8 A. A Sureno.

9 Q. And are the Surenos -- do they get along
10 with the SNM? Are they rivals?

11 A. We try to function and have respect, but
12 we tell them it's all good, and then usually the
13 time we see them, we try to stab them.

14 Q. Okay. And what was the reason for this?
15 Did he tell you what the reason was for the
16 stabbing?

17 A. Yes. The Surenos in Hobbs, in Level 3,
18 stabbed a guy named Spook, who was an SNM member
19 from his hometown, Belen.

20 Q. So what did Mr. Sanchez do?

21 A. Well, what usually happens in prison is
22 coincidence, when an individual like that -- they
23 put him in an SNM pod, they stab an SNMer, they put
24 them right in the midst of the SNM. So the SNM were
25 taking turns with the fierro in the showers. I

1 think three SNMers were trading it off. It just
2 happened to be that Dan was in the shower when the
3 guy, Rhino, was in the shower. He came out of the
4 shower and proceeded stabbing him and the officer.

5 Q. And he stabbed who else?

6 A. I think he stabbed the officer for getting
7 in the way. I think he stabbed him one time in the
8 vest.

9 Q. And did Mr. Sanchez tell you about this
10 incident?

11 A. Yes, ma'am.

12 Q. And in your eyes, would that have been an
13 SNM-related incident?

14 A. Yes, ma'am.

15 Q. Now, I believe you've already identified
16 Mr. Herrera. When you -- when did you meet him
17 again?

18 A. In 2005.

19 Q. And are you aware of whether or not he has
20 a tattoo that's gang-related?

21 A. He has a Zia symbol on his stomach with an
22 S in it for Syndicato.

23 Q. Now, were you aware of whether or not,
24 when you went to Southern in 2013 -- of whether or
25 not he was there?

1 A. Yes, he was there.

2 Q. Where was he being housed?

3 A. He was in yellow pod.

4 Q. Did he have a position in yellow pod?

5 A. Yeah. He was on the tabla. He was one of
6 the key-holders in yellow pod.

7 Q. Okay. Explain what key-holders is.

8 A. It's a voted member of the tabla, pretty
9 much. If Arturo or one of the original tabla
10 members show up, he wouldn't have it. So it's just
11 an elected position.

12 Q. A leadership position?

13 A. A leadership position.

14 Q. Now, what about Rudy Perez? Do you know
15 Rudy Perez?

16 A. Yes, I know who he is.

17 Q. Do you see him in the courtroom today?

18 A. Yes, ma'am.

19 MR. VILLA: Your Honor, we'll stipulate.

20 THE COURT: Does that work for you, Ms.
21 Armijo?

22 MS. ARMIJO: Yes, Your Honor. Thank you.

23 BY MS. ARMIJO:

24 Q. When did you meet him?

25 A. When I showed up in Southern New Mexico

1 Correctional Facility.

2 Q. Do you know if he's a member?

3 A. Yes, ma'am.

4 Q. Is he?

5 A. Yes.

6 Q. And where was he being housed in
7 relationship to where you were housed? Not exactly
8 cells, but was he in the same pod or a different
9 unit?

10 A. He was in the same pod with me.

11 Q. I'm going to go to when you went to
12 Southern, you indicated, in December of 2013.

13 A. Right.

14 Q. When you got there, was Mr. Baca there?

15 A. No.

16 Q. Do you know where he was?

17 A. He was in the North facility.

18 Q. And where were you coming from?

19 A. I was coming from the South facility.

20 Q. How long had you been, approximately, at
21 the South facility?

22 A. For nine to ten months.

23 Q. And then do you know, was that part of the
24 process of, if you know, being Level 6 and then when
25 you were in the South facility, what level were you?

1 A. Level 5.

2 Q. Okay. And when you went down to Southern,
3 the Southern New Mexico Correctional Facility, what
4 level were you there?

5 A. Level 4.

6 Q. So you had worked your way down to Level
7 4?

8 A. Yes, ma'am.

9 Q. Okay. What pod did you go into?

10 A. 1-A blue pod.

11 Q. I'm going to have some pictures displayed
12 that are already in evidence.

13 Can we get Exhibit Number 20 displayed?

14 Are you familiar with that scene?

15 A. Yes.

16 Q. What are we looking at?

17 A. Looking at the view from the front
18 entrance door, the bottom tier stairs, the top tier
19 stairs.

20 Q. And is that where you were housed?

21 A. Yes, ma'am. Right there in 111.

22 Q. Oh, okay.

23 A. There is 110 and 111, yes, ma'am.

24 Q. I'm circling it on the bottom right hand
25 of the screen?

1 A. Yes.

2 Q. All right. And then are you familiar with
3 the setup at Southern as far as the buildings?

4 A. Yes, I am. Just that area, though. I was
5 only there for three months, so just the unit I was
6 in.

7 Q. Now I'm going to show you Exhibit Number
8 162, which is in evidence. And this indicates that
9 it is a Southern New Mexico Correctional Facility
10 unit floor plan. And if you are aware or not, are
11 you aware of whether or not the buildings -- you
12 indicated that you were in a pod; correct?

13 A. Right.

14 Q. Blue pod?

15 A. Yes.

16 Q. Are you aware of whether or not the
17 building, the entire building that you were in, had
18 other pods in it?

19 A. Yes, it did.

20 Q. Okay. How many other pods were in it?

21 A. Two conjoining pods.

22 Q. Okay. And do you know where -- and I'm
23 looking at Exhibit Number 162 -- blue pod was?

24 A. Yes.

25 Q. Where would it have been on this screen?

1 A. It's on the -- it's the bottom corner one.

2 Q. The bottom corner one?

3 A. Yes.

4 Q. Where I've circled?

5 A. That one.

6 Q. That would have been the blue pod?

7 A. That's blue pod.

8 Q. Okay. And what was the pod in the middle,
9 if you know?

10 A. Yellow pod.

11 Q. Okay. And what is the pod to the right,
12 this one on top?

13 A. That's green pod.

14 Q. Okay. Now are those the official names,
15 or are those the names that people use because
16 that's the color that the doors are?

17 A. That's the color the doors are. So the
18 one in the middle would be 1-A A. The one I lived
19 in was 1-A B, and green was, I think, 1-A C.

20 Q. Okay. And does the 1-A refer to the
21 building?

22 A. Yes. It's the whole building as a whole.

23 MS. ARMIJO: I'm going to use a couple of
24 exhibits and I believe the defense does not have an
25 objection. But before I move for their admission,

1 I'm going to actually draw on it. So Your Honor,
2 I'm going to put up two exhibits on the Elmo but I
3 have permission from defense counsel to use it as
4 demonstrative evidence with Mr. Rodriguez.

5 THE COURT: Is that agreeable with all the
6 defendants?

7 MS. JACKS: Yes, Your Honor.

8 THE COURT: Do you want to identify the
9 exhibits, Ms. Armijo?

10 MS. ARMIJO: Yes, Your Honor. Exhibit
11 Number 752 is a New Mexico State Police diagram, not
12 to scale. 752 is the lower level of what would be
13 blue pod.

14 THE COURT: Okay. You gave me 752 twice.
15 Is the second one --

16 MS. ARMIJO: That second one there is 751,
17 as well. So one would be an upper level and one
18 would be a lower-level diagram. I believe 751 is
19 the upper level, and then 752 indicates that it's
20 the lower level.

21 BY MS. ARMIJO:

22 Q. And Mr. Rodriguez, are you familiar with
23 this diagram?

24 A. Yes, ma'am.

25 Q. Have you seen it in the discovery?

1 A. I seen it in my original state case for
2 the Molina murder.

3 Q. Okay. Are you aware, then, that New
4 Mexico State Police drew this diagram?

5 A. No.

6 Q. Okay. But you saw it from there?

7 A. I saw it from there, yes.

8 Q. It says "New Mexico State Police" on top?

9 A. Yes.

10 Q. Do you believe this is a fair and
11 accurate, although not to scale, diagram of the
12 lower level of the pod that you were referring to as
13 the blue pod?

14 A. Yes.

15 Q. Okay. And the same for 751 except that's
16 upper level?

17 A. Yes, ma'am.

18 Q. All right. Now, do you recall who was
19 living with you at the time in blue pod? And I'm
20 going to go specifically to March of 2014, and I
21 guess I'll be more specific. March 6th and 7th of
22 2014. Are you aware what happened that day?

23 A. Yes, ma'am.

24 Q. So can you remember where certain people
25 lived in these units?

1 A. Yes, ma'am.

2 Q. Okay. I'm going to first start -- and if
3 you don't remember, you know, just tell me. Tell me
4 if I am wrong on anything. Okay. Who, if you
5 recall, was living in 109?

6 A. The cell was vacant.

7 Q. Vacant?

8 A. Yes.

9 Q. 110?

10 A. Michael Hernandez.

11 Q. 111?

12 A. Myself, me.

13 Q. That was your pod?

14 A. Yes.

15 Q. 112?

16 A. Jeffrey Madrid.

17 Q. Right next to there is the shower; is that
18 correct?

19 A. Yes, ma'am.

20 Q. And then we're going to go up to -- I
21 believe it says 113?

22 A. That was Jerry Montoya.

23 Q. Room 114 -- cell?

24 A. I think that cell was vacant.

25 Q. Okay. 115?

1 A. Rudy Perez.

2 Q. Okay. And 116?

3 A. Ronald Sanchez.

4 Q. And who is Ronald Sanchez?

5 A. That's Dan Dan's brother, Daniel Sanchez'
6 brother.

7 Q. Is he an SNM Gang member?

8 A. No.

9 Q. Now, is he an associate?

10 A. I guess, yeah, he's an associate.

11 Q. What does an associate mean in your mind?

12 A. Just a friend that lives around us, just
13 someone that's in good standing with the SNM and
14 carries himself right and respectful.

15 Q. I'm showing you Exhibit 751, and this I
16 believe should be the upper level; is that correct?

17 A. Yes, ma'am.

18 Q. 101?

19 A. Jerry Armenta.

20 Q. 102?

21 A. I believe the next three cells were
22 vacant.

23 Q. I'm just going to put Vs for vacant.
24 Okay. 105?

25 A. Javier Molina.

1 Q. 106?

2 A. Jason Wright.

3 Q. Does he spell it with a W?

4 A. Yes, with a W.

5 Q. 107?

6 A. Daniel Sanchez.

7 Q. 108?

8 A. Timothy Martinez.

9 Q. Let's see. This is the upper level. So
10 would it be fair to say if I were to take these two
11 diagrams, 7 -- let me go out a little bit. There we
12 go. If I were to take these two diagrams and put
13 them on top of each other -- in other words, was
14 Timothy Martinez on top of Ronald Sanchez?

15 A. Yes.

16 Q. And was Rudy Perez on top of, cell wise,
17 or below Daniel Sanchez?

18 A. Yes. Daniel Sanchez lived above him.

19 Q. And just for clarification, I'm looking at
20 752, are these -- what are these?

21 A. Those are tables, sitting tables.

22 Q. And then in the picture we have, it says
23 "main entrance." What are these?

24 A. That's upper-level stairs and the lower
25 level, to go to the bottom tier.

1 Q. So then just for purposes of orientation,
2 is what we're looking at -- if I could have
3 displayed -- I'm sorry. I'm going to change it to
4 photograph 117. What is this a picture of?

5 A. That's the picture of the day of the
6 Molina murder.

7 Q. Okay. Now, specifically I'm looking at
8 stairs?

9 A. That's the upper level stairs.

10 Q. Okay. So in the previous exhibit, 752
11 when it said "up" --

12 A. Yes.

13 Q. -- and then there was a main entrance,
14 would we be standing at the main entrance looking
15 into blue pod?

16 A. Yes, ma'am.

17 Q. All right.

18 Did you know Javier Molina?

19 A. Yes, I knew him.

20 Q. Was he an SNM Gang member?

21 A. Yes.

22 Q. Did he have a gang name?

23 A. I used to call him Javi. But they called
24 him Crazy, I think.

25 Q. Now, did you know anything as far as his

1 status when you got to Southern, as far as his
2 status within the gang?

3 A. Yes.

4 Q. What was his status?

5 A. He -- he was a rat.

6 Q. And what do you mean by "rat"?

7 A. That he had given information to the
8 police in a case that was on the streets.

9 Q. And is that allowed?

10 A. No.

11 Q. Prior to your coming down to Southern,
12 were you part of any discussion about that?

13 A. Yes.

14 Q. Where was that discussion held?

15 A. In 2013, before I went to the Level 5
16 South.

17 Q. Okay.

18 A. I was in the 1-A yard with Robert Martinez
19 and David Calbert.

20 Q. Okay. Robert Martinez?

21 A. Baby Rob.

22 Q. Baby Rob, the same individual that you had
23 talked about being on the tabla, and with the Sosoya
24 incident?

25 A. Yes.

1 Q. Okay.

2 A. This is the first time myself and Robert
3 had seen each other since that incident. So -- and
4 Calbert was involved in the Silva incident. This is
5 the first time we've seen each other. There was a
6 lot of politicking going around. And that's when
7 Calbert told me he had paperwork on Jerry Montoya
8 and Javier Molina. That's the first I heard about
9 it.

10 Q. Okay. And were you anticipating going
11 down to South?

12 A. Yes.

13 Q. And did you go down to Southern before
14 anybody else, before the paperwork or after
15 paperwork, if you know?

16 A. Before or after?

17 Q. Yes.

18 A. Say that again.

19 Q. That was a poor question on my part. I
20 apologize. Okay. You indicated that at that
21 meeting you learned that there was paperwork.

22 A. Right.

23 Q. Okay. What is needed in order for a hit
24 to be carried out?

25 A. You need to see the paperwork.

1 Q. What's the significance of that?

2 A. Some carnals try to get other carnals
3 killed for personal vendettas, personal issues. So
4 a lot of us were willing to go do the killing, and
5 willing to do that. We don't want to be used. So
6 we have to see it. So I told him, "Well, let me get
7 that, because I'm about to go to the South."

8 And the next day, the caseworker seen he
9 was living in the same unit as his victim, Paul
10 Silva. So they moved him back to 1-B. I never got
11 paperwork from him. I was in 1-A. I left without
12 the paperwork.

13 Q. Okay. So just to be clear, Mr. Calbert
14 had assaulted --

15 A. Paul Silva.

16 Q. -- Paul Silva. And Corrections realized
17 they were being housed -- and that was in 2011, if
18 you recall?

19 A. It was -- no, this was towards the end of
20 2013, before I went to the South.

21 Q. Okay. The conversation -- but I'm talking
22 about the assault.

23 A. The assault was -- oh, yeah. It was at
24 the Level 5 facility in 2011.

25 Q. The same year -- and around the time that

1 you had had the incident with Mr. Sosoya?

2 A. A few months prior to the Sosoya incident.

3 Q. Okay. So Mr. Calbert was moved?

4 A. Yes.

5 Q. And was that expected by you? That he
6 would be moved, I mean?

7 A. I knew -- I knew the administration was
8 going to move him.

9 Q. All right. Because they didn't want him
10 housed --

11 A. They didn't want him housed, and Silva was
12 still -- had a little bit of influence.

13 Q. So going to when you get down to Southern,
14 do you see Javier Molina?

15 A. I do.

16 Q. And what was your relationship with him?

17 A. Well, he was there the day I met Arturo
18 Garcia. And Arturo Garcia asked me if I wanted to
19 get down with the S. He was in the yard that day.

20 Q. So you knew him previously?

21 A. I've known him since 2005. We didn't have
22 a relationship back then, but I knew him.

23 Q. And when you came down to Southern, did
24 you remember him? And how would you describe your
25 relationship after that?

1 A. We didn't have a relationship at that
2 time, but he was hanging out with a good friend of
3 mine, Timothy Martinez. And that's how we became
4 friends.

5 Q. Who is Timothy Martinez?

6 A. He's a good friend of mine from the
7 streets. I've known him since we were little kids.

8 Q. And was he friends with Javier Molina?

9 A. Yes, they were very close.

10 Q. Okay. Now, Timothy Martinez, while he was
11 incarcerated -- was he involved in any sort of
12 business?

13 A. He was a hitter; they call them hitters:
14 Distribution of drugs, bringing in drugs, selling
15 drugs, a lot of money business. He was into the
16 money part of SNM.

17 Q. Now, when you say "hitter," you're
18 referring not to physical hits?

19 A. No, we call hitters people who go to
20 visits and bring in drugs, always have drugs.
21 They're just known to -- someone comes in the pod,
22 oh, he's a hitter. So everyone knows what that is.

23 Q. Was Timothy Martinez supplying you with
24 drugs at the time?

25 A. In Southern?

1 Q. Yes.

2 A. Yes.

3 Q. Who was he supplying?

4 A. The whole unit, the whole unit.

5 Q. So at some point in time when you were at
6 Southern, did you become aware of somebody coming
7 down that causes you to do something?

8 MS. BHALLA: Objection, Your Honor,
9 leading.

10 A. Before --

11 THE COURT: I don't know how else to ask
12 the question. Overruled.

13 A. Before I left the Level 5 facility at the
14 South, I sat down with Lupe Urquizo, Mauricio
15 Varela, and Robert Martinez, and told them to tell
16 David Calbert that I'm not going to do nothing to
17 Molina until I see the paperwork, to bring it, and
18 then I left.

19 Q. Okay.

20 A. I was aware that Mauricio Varela and Lupe
21 Urquizo were next after me to go to Level 4.

22 Q. And how did you know that?

23 A. Because that's the process. We were
24 staying out of trouble just to -- it's a
25 six-to-nine-month process to complete the level.

1 Q. All right. So you knew that, based upon
2 how long your time was there?

3 A. Yes. And we knew that Calbert was going
4 to be coming down to the Level 5 soon, too. That
5 was the group I was associated with. We all have
6 little groups, little cliques, that we associate
7 with. Those are my friends.

8 Q. Now, even though there are little cliques
9 within the group --

10 A. Right.

11 Q. -- is it still one organization?

12 A. One organization. Just friendships are
13 stronger than others.

14 Q. Now, at some point in March did you become
15 aware of something in reference to -- that you
16 thought might have something to do with paperwork?

17 A. Yes.

18 Q. Tell us about that.

19 A. The train got there. We knew that Lupe
20 Urquizo and Mauricio Varela were on the way to the
21 South facility.

22 Q. You mentioned the train. What do you
23 mean?

24 A. The transport vehicle. They were coming
25 from Level 5 down to Southern from Santa Fe.

1 Q. And how did you know that?

2 A. There is a chalk board in the control
3 center. And you'll see the CO wiping things off and
4 putting new names on. And their names on there.
5 There was another individual, too. I don't remember
6 his name, I know his nickname, Cartoon, but I didn't
7 know his real name. I didn't recognize it when I
8 seen it on the board.

9 Q. So you knew that Mr. Varela and Mr.
10 Urquizo were coming down?

11 A. Right.

12 Q. And what, in your mind, did that -- how
13 did that impact you?

14 A. I met with Dan. I told him, "I think the
15 paperwork is going to be here."

16 Q. When you say "Dan," who are you referring
17 to?

18 A. Daniel Sanchez.

19 Q. Does he have a nickname within the gang?

20 A. Dan Dan.

21 Q. Okay. And why would you have gone to
22 Dan Dan for -- because of this?

23 A. He's my big homie. He was the guy I
24 looked up to, and I respected him.

25 Q. Now, in the pod that you -- in blue pod,

1 was there a key-holder?

2 A. Yes.

3 Q. Who was the key-holder?

4 A. Daniel Sanchez.

5 Q. And you told him that the paperwork was
6 coming to you? What were you referring to?

7 A. I told him the paperwork was going to be
8 here. I was referring to the paperwork on Molina,
9 him working with the police department right here in
10 Cruces.

11 Q. And so what happened after that?

12 A. Mauricio Varela and Lupe Urquizo came to
13 the pod. They locked down yellow pod, and left us
14 out. I had already written a letter to Lupe Urquizo
15 based on -- letting him know who the llaveros --
16 that Benjamin Clark was trying to get him hit. And
17 then I was asking for a syringe, because there
18 wasn't that many syringes in the unit. I was pretty
19 much giving him the rundown of what was going on.

20 Q. Who were you giving that to?

21 A. To Lupe Urquizo. And as I wrote it, me
22 and Dan Sanchez were sitting at the table as I wrote
23 it, before he showed up. So when he comes into the
24 door, I called him to the conjoining doors.

25 Q. And who is "he"?

1 A. Who is who?

2 Q. Who?

3 A. Who? Who is who?

4 Q. Okay. You said that he came to the door.

5 A. Oh, yeah. I called Lupe Urquizo to the
6 door.

7 Q. Okay. And what door are you referring to?

8 A. The conjoining doors, the emergency
9 conjoining doors to each pod.

10 Q. And I'm going to show you the picture or
11 diagram. I'm going to show you -- I believe it's
12 Defendants' E-17. Okay. Can you see that picture?

13 A. Yes.

14 Q. I believe you were talking a little bit
15 about going to a door. Do you, by chance, see the
16 door in the picture?

17 A. That's the top tier conjoining door.
18 There is a bottom one, as well.

19 Q. Okay. So much like the diagrams we saw,
20 there is an upstairs and downstairs. Is there
21 another door just like the one that I'm circling on
22 the bottom level?

23 A. Yes, ma'am.

24 Q. Okay. And then I'm looking at the very
25 bottom. Does the door go all the way to the ground,

1 or is there a little bit of an opening there?

2 A. There is a crack under the door.

3 MR. VILLA: Your Honor, can we take a
4 quick break for Mr. Perez?

5 THE COURT: Why don't we maybe take a
6 little bit later lunch? Let's take a break here for
7 about 15 minutes, and we'll take a little bit later
8 lunch break. All rise.

9 (The jury left the courtroom.)

10 THE COURT: Did you have this V-17 as
11 being in evidence already?

12 THE CLERK: Yes.

13 THE COURT: All right. I must not have
14 written it down or it's on another piece of paper.

15 All right. We'll be in recess about 15
16 minutes, and then we'll take a little later lunch
17 break.

18 (Court stood in recess.)

19 MS. FOX-YOUNG: Your Honor, may I make a
20 brief record?

21 THE COURT: Go ahead.

22 MS. FOX-YOUNG: Your Honor, just for the
23 record, Mr. Perez has been asleep for large portions
24 of the testimony this morning, including the portion
25 where the witness was identifying who lived where,

1 with direct testimony about Mr. Perez. He's been
2 having a difficult time. As the Court heard, he did
3 have another coughing fit, and was awake for that
4 portion of the testimony. And then we want to thank
5 the Court for giving us a break so he could go take
6 care of what he needed to take care of. But he is
7 struggling. And we're not able to work with him
8 through the testimony.

9 THE COURT: I have been watching him. He
10 looks quieter today. As far as coughing, he did
11 cough there toward the end. It looked to me like he
12 was awake most of the time. I can't see his eyes as
13 well as you probably can with his glasses on. But I
14 did notice him moving a fair amount, either --
15 adjusting the mask. But I think he's been awake for
16 good portions of it.

17 Anything else while we're waiting for the
18 jury to come in?

19 What is it this bad act? What is that
20 issue?

21 MS. ARMIJO: Your Honor, it was an
22 incident in June 22, 1989. It is Mr. Baca's
23 murdering of another SNM Gang member. And Mr. Baca
24 spoke to Mr. Rodriguez about the incident.

25 THE COURT: And is this the reason this

1 one is important, is because it wasn't disclosed
2 earlier or --

3 MS. ARMIJO: No, the incident was
4 disclosed earlier. And we had it as -- I believe
5 Mr. Castellano argued for this incident. We had
6 it -- we disclosed the incident itself, and
7 everybody knew. But I believe at the time that we
8 were going over bad acts, I believe the Court
9 indicated that if we could prove it's SNM-related --

10 THE COURT: Okay.

11 MS. ARMIJO: And then based upon what Mr.
12 Rodriguez has told us, and that was disclosed, and
13 I'll give --

14 THE COURT: Let's do this: I'll let you
15 do it when you're about ready to offer it.

16 MS. ARMIJO: No, I'll offer it later. I'm
17 going through the --

18 THE COURT: Okay..

19 (The jury entered the courtroom.)

20 THE COURT: All right. Everyone be
21 seated.

22 All right. Mr. Rodriguez, I'll remind you
23 that you're still under oath.

24 Ms. Armijo, if you wish to continue your
25 direct examination of Mr. Rodriguez --

1 MS. ARMIJO: Thank you, Your Honor.

2 THE COURT: -- you may do at this time.

3 BY MS. ARMIJO:

4 Q. So Mr. Rodriguez, I believe before the
5 break we were showing you a picture of a door. And
6 was that door between blue pod and yellow pod?

7 A. Yes.

8 Q. I think the picture was actually of the
9 upper-level door. Is there one on the lower level,
10 as well?

11 A. There is.

12 Q. And I believe you were talking about
13 something in referencing that door. Could you again
14 remind us what you said about that door?

15 A. Okay. The day Lupe Urquizo showed up, I
16 went to the bottom door. I called him to the bottom
17 door. I already had written a letter to him letting
18 him know what was going on on the politics, who was
19 on the tabla, asking him for his syringe, just
20 pretty much a rundown of what was going on in the
21 unit.

22 Q. Was that the letter that you said you sat
23 down and wrote when you were sitting at the table?

24 A. At the table, yes, with Dan. Dan was
25 sitting at the table with me at the time.

1 Q. And how was it that Mr. Urquizo was in
2 yellow pod? I mean, were there other gang members
3 there, or -- I believe you said something about
4 clearing out something.

5 A. They locked down the unit. When new
6 people come, they lock down the unit because they
7 got to go to orientation first.

8 Q. And what does "lock down the unit" mean?

9 A. They make everyone go to their cells, they
10 close all the doors.

11 Q. Okay.

12 A. They let the new inmates come in.

13 Q. Okay. So as far as you are aware, the
14 inmates that had been staying at yellow pod were
15 locked down in their cells?

16 A. Yes, ma'am.

17 Q. Okay. And do you recall what date that
18 was?

19 A. That was Thursday, the day before the
20 Molina murder.

21 Q. And you indicated you passed a note to Mr.
22 Urquizo?

23 A. I -- me -- I took Timothy Martinez to the
24 door with me. I introduced him to Timothy Martinez,
25 and I asked him, "Where is the CO at?"

1 He said, "He's over there with Archie."

2 I put the letter on the floor, and I
3 kicked it to him. I told him, "Get that."

4 And I introduced him to Timothy. I asked
5 him if he still had a syringe. And he said, "Yeah."

6 I told him, "Don't tell them you have it.
7 Just let me get it," because there was only one
8 syringe in the unit.

9 So he left, they locked him down, and that
10 was it. I introduced him to Timothy Martinez, and
11 he went on lockdown.

12 Q. Why did you introduce him to Timothy
13 Martinez?

14 A. Because Timothy was my friend, and, you
15 know, he was the hitter. And Lupe was one of my
16 good buddies, so I wanted Urquizo in on the ride.

17 Q. Now, at some point, do you get paperwork?

18 A. I do.

19 Q. And that is on the same day, on Thursday,
20 or is that the next day?

21 A. The next day.

22 Q. What happens the rest of the day, in
23 general, on Thursday?

24 A. All right. He responded to my letter,
25 which Carlos Herrera brought me that letter that he

1 responded to my initial letter, telling me that --

2 Q. "He" being who?

3 A. Lupe Urquizo was telling me that he was
4 next door to -- I think his name is Gumby, who had
5 got him jumped in the past, and he was going to stab
6 him. And then pretty much gave me a rundown what
7 was going down with him and Archie, as far as who
8 they were going to go after, and stuff like that.

9 I wrote him back after reading that
10 letter, and I told him not to stab Gumby; just to
11 beat him up; that he wasn't worth going back to the
12 North. And I asked him again, "What's up with that
13 paperwork?"

14 And he didn't respond to -- the initial
15 one I asked him in the letter, he didn't respond to
16 it. The one I sent him back to his response, he
17 didn't respond to it.

18 Q. Okay. So you sent him a total of two
19 letters?

20 A. Sent him a total of two letters. He sent
21 me one.

22 Q. Okay. And you're looking for the
23 paperwork?

24 A. I was asking for the paperwork.

25 Q. And that was on the 6th. Do you recall

1 approximately what time of day that was? Was it in
2 the morning? Was it at night?

3 A. It was before the 4:00 count. So it was
4 throughout the day from around maybe -- they got
5 there about maybe 12:00.

6 Q. I guess I'm going to ask you a little bit
7 about was going on at that time. You mentioned 4:00
8 count.

9 A. Right.

10 Q. What is that?

11 A. 4:00 count wasn't going on yet. But 4:00
12 count is when everyone locks down in the unit, and
13 the COs go through and take numbers of -- where the
14 inmates are. It's the official prison count.
15 Everyone in the whole prison is making sure no one
16 has escaped or no one is missing or anything like
17 that.

18 Q. And does that happen throughout the day at
19 specific times?

20 A. I think it happens three times a day.

21 Q. Does it happen even at nighttime?

22 A. It does.

23 Q. And for count, do you have to go in your
24 cell?

25 A. You have to go in your cell, yes, for an

1 hour.

2 Q. For an hour?

3 A. Yes.

4 Q. Okay. So nothing happens that night?

5 A. No.

6 Q. And we're on, now, March 6, I believe
7 of --

8 A. That's March 6.

9 Q. Okay. A Thursday night?

10 A. Right.

11 Q. What about the next morning?

12 A. The next morning we're getting ready to go
13 to -- it's Friday, so we're going to go to gym and
14 big yard, which is two big cages inside of the GP
15 yard.

16 Q. When you say "GP" --

17 A. General population yard.

18 Q. So you were getting ready to go -- is that
19 called something specific? Is it --

20 A. Big yard or gym. We go once a week, and
21 we alternate. One pod will go to gym; two pods will
22 go to outside rec, and then alternate.

23 So we were going then. And before going
24 out, you walk out of your pod and you all are in the
25 middle of the unit, right below the control center.

1 So you can see all three doors: Yellow pod, green
2 pod, and blue pod.

3 I went to yellow pod, and I called Carlos
4 Herrera to the door. And I asked him, "Does he have
5 that?"

6 He goes, "Yeah, yeah." He thought I was
7 talking about the syringe.

8 I told him, "No. Come here. Come to the
9 door. Does he have the paperwork?"

10 "Hold on."

11 He goes and talks to Marijuano, and
12 Marijuano tells him, "Yeah, I got it."

13 He comes back and tells me, "He gets it.
14 They'll send it to me later."

15 Q. Where was this conversation again?

16 A. This conversation was in the unit below
17 the control center. It's like a sally port that
18 connects all three pods.

19 Q. Okay. And so you were standing there?

20 A. I was standing in front of yellow pod
21 door.

22 Q. So we're not talking about the door that
23 we had seen before.

24 A. No.

25 Q. It's actually -- if I could get the

1 diagram of the three pods up again?

2 A. It's in the pod.

3 Q. 162. Are you familiar with this diagram,
4 again?

5 A. Yes, ma'am.

6 Q. Now, is the area where you were
7 standing -- is that area depicted in here?

8 A. Yes, it is.

9 Q. Okay. And let's see. I believe we had
10 previously said that the bottom one is blue pod;
11 correct?

12 A. Right.

13 Q. And so you said that you went -- you were
14 going outside?

15 A. You see where it says "pod entrance/exit"?

16 Q. Right here?

17 A. Right there.

18 Q. Okay.

19 A. Each pod entrance/exit is the door going
20 into the pods, individual pods.

21 Q. Okay. Like this area, or not?

22 A. That's the front door to the whole unit.

23 Q. Okay.

24 A. Okay. See where it says "officer station
25 area"? That's the control center. It's above --

1 the white part around it is the sally port, where
2 you can go to each door.

3 Q. Okay. So if you're standing here --

4 A. Right, standing there.

5 Q. -- you can go and talk to --

6 A. Each door. Anyone in each different pod.

7 Q. Okay. And so if you're standing here --

8 A. Right.

9 Q. -- you can talk to the people in yellow?

10 A. Yes. And you'll see -- Carlos Herrera
11 came to the other side of the door. You see where
12 the middle cell is? That's where Lupe Urquizo was
13 at. I could see him from the front door.

14 Q. You said the middle cell.

15 A. Right.

16 Q. Like over here?

17 A. No, to the other side.

18 Q. I'm sorry.

19 A. It's the same cell you just highlighted,
20 but the other side. In the same pod.

21 Q. Here?

22 A. No, keep going.

23 Q. Here?

24 A. No, next one.

25 Q. Here?

1 A. Right there.

2 Q. The cell that I'm now circling?

3 A. The one next to it.

4 Q. This one?

5 A. No, the one right there.

6 Q. I'm sorry. Can you touch the screen or
7 no?

8 A. There's four cells. See the first one you
9 highlighted? The one right next to it.

10 Q. This one?

11 A. No, the next one.

12 Q. This one.

13 A. Yes, that one.

14 Q. So we now finally have on Exhibit 162 --

15 A. That's where Lupe Urquizo lived.

16 Q. And so he had already been placed into the
17 pod; correct? Yellow pod?

18 A. Yes.

19 Q. So was he allowed to come out with
20 everyone else?

21 A. No. He was on orientation.

22 Q. He was on orientation?

23 A. Yes.

24 Q. That's the seven-day period that you spoke
25 about before?

1 A. Yes, ma'am.

2 Q. Okay. Now -- and so where were you
3 standing when you were talking? It says "pod
4 entrance door." Is that where you were?

5 A. Yes. The door is closed right there. I'm
6 standing right there. And Carlos Herrera is
7 standing on the opposite side.

8 Q. Okay. And is there a window through that
9 door?

10 A. Yes. There is a little window. There is
11 the door, and there is the window. It's a
12 rectangle.

13 Q. So you can see who you're talking to?

14 A. You can see who you're talking to.

15 Q. And you can hear them?

16 A. Yes.

17 Q. Can you see in the pod?

18 A. Yes.

19 Q. So you were actually able to see where
20 Lupe was?

21 A. Yeah.

22 Q. And then you were able to see who you were
23 talking to?

24 A. Yes.

25 Q. And who were you talking to?

1 A. Carlos Herrera.

2 Q. All right. And this is before you were
3 going to be going out to the gym.

4 A. The yard.

5 Q. To the yard.

6 A. The gym yard, yeah.

7 Q. So what happens there when you're talking?

8 A. Okay. He tells me, Yeah, that he'll get
9 it to me later. So we go to yard, and myself and
10 Daniel Sanchez go and talk to an individual named
11 Ernest Guerrero about not letting nothing happen to
12 Lupe Urquizo. We go to yard, and do our one-hour
13 yard. And we seen that -- I think Archie's property
14 was coming.

15 Q. Okay. Now, I'm going to stop you right
16 there. When you were at the door talking to Mr.
17 Herrera, were you alone?

18 A. Yeah. I was alone. Everyone else was
19 around me, but the conversation was just through the
20 door.

21 Q. Okay. So then at some point, you see that
22 Archie Varela is getting his property?

23 A. While we're in yard.

24 Q. How do you see that?

25 A. Because he was the last one to get his

1 property. And we can see whoever comes into the
2 unit from the yard.

3 Q. And how did you know that was Archie
4 Varela's?

5 A. Because he was the last one waiting for
6 his property. He was asking for canteen prior,
7 because he hadn't got his property yet.

8 Q. How is property transported?

9 A. You go from -- one facility inventories it
10 to the next, and they're supposed to inventory it
11 there.

12 Q. Is in it a box, a suitcase?

13 A. It's in a big trash bag.

14 Q. And is that trash bag clear?

15 A. It is.

16 Q. So after you see that, and after yard,
17 what do you do? I mean, do you go back inside?

18 A. Yeah, we go back inside.

19 And Carlos Herrera called me to the
20 conjoining door on the bottom, the emergency exit.

21 Q. The one that you were talking to the night
22 before, to Mr. Urquizo?

23 A. Yes, yes.

24 Q. Okay.

25 A. He slides me under a manila envelope with

1 legal work in it.

2 Q. Okay. And does Carlos tell you anything?

3 A. Not at that time, no.

4 Q. How do you know it was Carlos?

5 A. I know his voice. I know him. I talk to
6 him.

7 Q. Did he call you, say, "Hey, Mario" --

8 A. "Hey, Blue, open the door." I went to the
9 door, and he was here.

10 Q. Hey who?

11 A. Blue. B-L-U-E.

12 Q. So he was calling you?

13 A. Yes.

14 Q. Okay. And so he called you over to the
15 door?

16 A. Right.

17 Q. And he said it was a manila envelope?

18 A. Right.

19 Q. Did it have anything on the outside of it?

20 A. Not that I remember.

21 Q. You said it was legal paperwork.

22 A. It was legal paperwork, yes.

23 Q. How do you know it was legal paperwork?

24 A. Because it was Lupe Urquizo's name, and
25 that's usually how we transport paperwork. We'll

1 get the statements and we'll take apart the staple
2 and put the statement inside the real legal work and
3 cover it up.

4 Q. Did the outside of the envelope have
5 anything that said, like, Lupe Urquizo -- did it say
6 legal work?

7 A. No, legal work had his name on it. His
8 appeal to one of his state convictions.

9 Q. Okay. So you get this envelope, and what
10 do you do with it?

11 A. I take it to -- I called Dan, and I take
12 it to right there in front of my cell 111. There is
13 like a stoop. And me and him sit there and we read
14 it. We're sitting next to each other and we read
15 it. He's reading it at the same time I'm reading it.
16 And he says, "It's done."

17 I hadn't finished reading it yet. And
18 told him, "All right. It's done." So --

19 Q. Now, what did you take "It's done" to
20 mean?

21 A. It's done. The guy is done. It's time to
22 kill him.

23 Q. What do you recall -- you said you hadn't
24 finished reading it before Mr. Sanchez said, "It's
25 done." What do you recall, as best you can, was

1 inside that paperwork?

2 A. What I noticed is that his name was in
3 bold letters, other than like the rest of the typing
4 was regular. And Javier's was in bold writing with
5 an underline from, like, a computer. And I was
6 waiting to see if he gave up names. There was no
7 names he gave up. He just said that he was the
8 driver of a car; that a guy in the backseat got out,
9 came back running with a purse, or something, and
10 told him to go. The guy in the front got the purse
11 and threw it out. I forget the street name, but he
12 identified the street name where the purse was
13 thrown out. It was a robbery of some lady with a
14 purse.

15 Q. Do you recall if it was one page or two,
16 if you remember?

17 A. I don't remember. I just remember that
18 page.

19 Q. Okay. And --

20 A. There might have been three pages to the
21 whole thing.

22 Q. But you don't recall?

23 A. I don't recall exactly how many.

24 Q. Because you were only able to look at one
25 page, as you recall?

1 A. I think I went through the whole thing
2 eventually, but the main focus was on that page.

3 Q. Okay. And then Mr. Sanchez said, "It's
4 done"?

5 A. "It's done."

6 Q. What happens after that?

7 A. I take it back to Lazy at the door, and he
8 goes --

9 Q. And who is Lazy?

10 A. Carlos Herrera.

11 Q. Okay.

12 A. I call him to the door. I gave it back to
13 him. He goes, "Well, I'm going to go show green
14 pod."

15 And I said, "Don't fucking show green pod.
16 Don't trust them fuckers in green pod. Don't show
17 them."

18 He got kind of mad. He goes, "I have to.
19 They're on the tabla."

20 I said, "Just don't show green pod," and I
21 left.

22 Q. Why did you not want green pod to see it?

23 A. Because I didn't trust the guys in there.
24 They had a lot of clear conduct, and I didn't trust
25 them.

1 Q. Were all three pods SNM Gang members?

2 A. Yes.

3 Q. So you give it back to him and you ask Mr.

4 Herrera not to --

5 MS. BHALLA: Objection, leading.

6 THE COURT: Overruled.

7 BY MS. ARMIJO:

8 Q. You asked Mr. Herrera not to give it to
9 green pod. What do you do after that?

10 A. I go and I start talking to Dan Dan.

11 Q. Okay. And was there -- when you were with
12 Mr. Herrera, did you have any other conversation
13 about when it would happen?

14 A. Not yet.

15 Q. Okay. So you then go to Dan Dan, and what
16 happens then?

17 A. I told him, "Me and you or what?"

18 He goes, "No."

19 Q. What did you mean by "me and you"?

20 A. He and I would go kill Molina. So "Me and
21 you?"

22 MR. LOWRY: Your Honor, this is a perfect
23 time to give a limiting instruction.

24 THE COURT: All right. So these
25 statements can be used against Mr. Sanchez, but not

1 as to the other defendants in the case. So you can
2 use it only in your consideration of the charges
3 against Mr. Sanchez.

4 Ms. Armijo.

5 MS. ARMIJO: Thank you.

6 BY MS. ARMIJO:

7 Q. And so he says, "Me or you or what?"

8 A. No, I told him, "Me and you or what," like
9 insinuating that me and you are going to do it. He
10 said, No, that we'll figure it out.

11 So then we continue to talk. I asked him,
12 "What about the cameras?"

13 He said, "Don't worry about the cameras."
14 He told me, "There's some guys need to earn their
15 bones."

16 So he chose Timothy Martinez. But he
17 expressed to me that Timothy Martinez wouldn't
18 listen to him; that I needed to tell him.

19 Q. You said he said -- I'm going to back you
20 up just a minute -- that there were some people that
21 needed to earn their bones?

22 A. Yes.

23 Q. What does that mean?

24 A. Well, in the SNM, you're not really a made
25 member until you stab someone. If you go and stab

1 someone, like an enemy, on your own, that can be
2 earning your bones. But when you're told to do
3 something, that's earning your bones. You're under
4 the gun. You've got to do it. It's time for you to
5 earn your bones.

6 Q. You mentioned Timothy Martinez. What
7 about him?

8 A. He told me he wanted Timothy Martinez,
9 Jerry Montoya, and Jerry Armenta. And I expressed
10 to him that I didn't think they were up to it. I
11 didn't think Jerry Armenta was really about it.

12 Q. So both Jerrys?

13 A. Right. And plus we -- earlier, Calbert
14 had told me that Jerry Armenta was a rat. So I
15 really didn't want to use him, no. And he goes,
16 "No, it's time for him to go. He's done 16 years,
17 and he hasn't done shit yet."

18 So Jerry Armenta is his friend. That's
19 his buddy. So he's in control of that. He's
20 supposed to tell both Jerrys. I'm just supposed to
21 tell Timothy Martinez.

22 Q. Whose decision was that?

23 A. Dan Dan's.

24 Q. Okay. And you mentioned Timothy Martinez,
25 something about -- why was he picked?

1 A. Because Dan Dan didn't think -- Dan Dan
2 had issues with him. There was rumors about Timothy
3 Martinez punking him out, or some shit like that.
4 And he didn't feel Timothy would be up to it. And
5 he knew if Timothy didn't do it, he can get him out
6 of the picture. Me being the loyal person I was to
7 the SNM, and Timothy being from my city, he knew I
8 would take it upon myself to stab him, if he didn't
9 do it.

10 Q. And is this the same Timothy Martinez that
11 you said you introduced to Urquizo the night before?

12 A. Same Timothy Martinez I introduced.

13 Q. And what's his nickname in the gang?

14 A. Red.

15 Q. Does he have red hair?

16 A. He does.

17 Q. So what instructions are you given, if
18 any?

19 A. Okay. At this time, there was just the
20 choosing of them. Then we need to find weapons. We
21 sat down -- that's when I asked him about the
22 camera. He said, "Don't worry about the camera."

23 It was going to happen in Molina's room.
24 And I told him, "That's not a blind."

25 He goes, "It's a blind spot. The cameras

1 can't see in the room."

2 I'm, like, "Fuck it."

3 Then he told me to go tell Lazy that it
4 would happen after cuenta.

5 Q. Okay.

6 A. I went and told Lazy, "After count, it's
7 going to happen."

8 Q. When you say "Lazy," you're referring
9 to --

10 A. Carlos Herrera.

11 Q. And how was it that you went to tell Lazy?

12 A. I went to the conjoining emergency door at
13 the bottom.

14 Q. I mean, do you call for him? What did you
15 say?

16 A. You just yell out, "Hey, Lazy," through
17 the crack of the door. And they'll hear you and
18 come to the door.

19 Q. Did he come to the door?

20 A. He came to the door.

21 Q. And what did you do?

22 A. I told him after cuenta, after count.

23 Q. What does "after cuenta" mean?

24 A. It means that -- the 4:00 count, the doors
25 open back up at 5:00. We go in for lockdown, so

1 they can do the whole counting of the facility.

2 Q. And what was the purpose of telling him
3 after cuenta? What did you mean by saying after
4 cuenta? What were you referring to?

5 A. That the murder was going to take place.
6 We're going to move on him.

7 Q. And why was it that you told Carlos?

8 A. Because Dan told me to.

9 Q. And do you know why?

10 A. Now that I think about it, no, I don't.

11 Q. Did Carlos say anything back?

12 A. He said, "All right."

13 Q. So after that, what do you do?

14 A. All right. So while I was telling Lazy,
15 he was at Rudy Perez' door talking to Rudy. I
16 walked by him, because we needed to find some
17 weapons. The weapons we had were just one-hitters.
18 They're icepicks. And he wanted to do it a
19 stabbing, you know, so --

20 Q. Who is "he" wanted to do a stabbing?

21 A. Daniel Sanchez wanted it to be a stabbing.

22 So I had been working on taking a
23 double-edger off my hamper. I was cutting the
24 metal. And I was in my room seeing if I can get it
25 off really fast. And he was talking to Rudy Perez.

1 He called me over, "Hey Blue, come here."

2 I went over. And Rudy Perez' door was
3 closed. Rudy was at the door.

4 Q. Okay. Now wait. Just to reference this,
5 I'm going to show -- if I could have the Elmo again,
6 Ms. Standridge. Thank you.

7 All right. Just for referencing sake, I
8 believe this is Exhibit Number 752, which you
9 previously had said -- I'm pointing to Room 115.

10 A. Right.

11 Q. Is that correct?

12 A. Yes, ma'am.

13 Q. Now, on this diagram, it doesn't show it,
14 but can you tell the jury where that door would be
15 that -- if it's in this area, where the door would
16 be for yellow pod?

17 A. It's the line to the right where it says
18 "lower walkway," like a long rectangle, that line
19 right there. That's the door.

20 Q. This whole line here?

21 A. Just that block right there. From the
22 cell to the other line, the parallel line.

23 Q. Here?

24 A. Yes.

25 Q. Sorry. So that's where you were when you

1 were talking to Carlos Herrera?

2 A. Yes, ma'am.

3 Q. And then when you turned around after
4 that, where was Mr. Sanchez?

5 A. In front of Rudy Perez' cell, talking to
6 Rudy.

7 Q. Okay. I'm putting my finger in front of
8 115.

9 A. Right.

10 Q. And so is that a close area there?

11 A. Yes. Right at the front door, right at
12 Rudy's front door.

13 Q. And at this point -- prior to this, you
14 were talking a little bit about not having what you
15 thought would be the correct weapons?

16 A. Right.

17 Q. Okay. You mentioned "icepick"; what's
18 that?

19 A. It's an icepick. It's a long, thin, like
20 about a pencil-sized shank.

21 Q. Okay. So an icepick is a type of shank?

22 A. Right. I was in 111, right there, while
23 he was talking to Rudy Perez. I went from the
24 adjoining -- the door, talking to Carlos Herrera, to
25 my cell.

1 Q. Which is all the way right here?

2 A. Right. And I had my door open, and I was
3 looking at the hamper.

4 Q. Okay. I drew a line from where you were
5 talking, to your room, which is 111?

6 A. Right.

7 Q. Okay.

8 A. And then while I was messing with the
9 hamper, Dan called me to -- what is it? 115? Rudy
10 Perez' cell.

11 Q. And you were not in there for -- you said
12 that you had seen Daniel Sanchez at the door?

13 A. Right, talking to Rudy.

14 Q. Okay. Is that when you walked by, from
15 when you were talking to Carlos?

16 A. Yes.

17 Q. And you didn't overhear the conversation,
18 did you?

19 A. No, I did not.

20 Q. What was -- was it soft tones that they
21 were talking? I mean --

22 A. I just wasn't paying -- I was to go find a
23 weapon.

24 Q. You didn't hear any screaming or anything?

25 A. No.

1 Q. You didn't hear anything that caused you
2 any alarm? Or did you?

3 A. No.

4 Q. Okay. So then now Daniel Sanchez calls
5 you over to Rudy Perez' cell?

6 A. Right.

7 Q. What happens then?

8 A. Rudy Perez steps to the side and tells
9 me -- he points to the bar on the walker, "Get it."

10 Q. Who points to it?

11 A. Daniel Sanchez. Rudy steps to the side.
12 Daniel points to the walker and says, "Get that
13 right there. Make them out of that."

14 Q. Okay. And what was he pointing to?

15 A. To -- there is a walker, and when it opens
16 up, there's two conjoining pieces of metal that
17 is -- has a bar connecting them all the way across.

18 Q. Okay. I'm going to show on Exhibit 88 --
19 which I believe has been admitted --

20 A. Right. That's it.

21 MS. FOX-YOUNG: Your Honor, may we
22 approach?

23 THE COURT: You may.

24 (The following proceedings were held at
25 the bench.)

1 MS. FOX-YOUNG: Your Honor, if you don't
2 mind, Mr. Villa is handling this witness, but if the
3 Court would just let me make a record because Mr.
4 Villa has been taking notes. Mr. Perez is sleeping
5 through the testimony. This is the most critical
6 part of the testimony regarding his involvement. We
7 are trying to give him caffeine. We're banging on
8 his arm. But I want to let the Court know he's
9 really sick, and not alert. We can't communicate
10 with him. We're doing our best, Judge, short of
11 knocking him over his head.

12 THE COURT: If you doze in court and
13 sleep, what am I supposed to do?

14 MS. FOX-YOUNG: He's sick.

15 THE COURT: There are other people sick.
16 The jurors are sick.

17 MS. FOX-YOUNG: I'm just making a record,
18 Judge.

19 (The following proceedings were held in
20 open court.)

21 THE COURT: Ms. Armijo.

22 BY MS. ARMIJO:

23 Q. And I believe it was Exhibit Number 89
24 that we're looking at, for the record.

25 THE COURT: Has it been admitted?

1 MS. ARMIJO: It has been admitted.

2 BY MS. ARMIJO:

3 Q. All right. Mr. Rodriguez, what are we
4 looking at?

5 A. Rudy Perez' walker.

6 Q. And how are you familiar with this walker?

7 A. With the streamers, the sheets tied to the
8 bottoms, where I took the bar from.

9 Q. Okay. So were those streamers at the
10 bottom there before you took anything from them, or
11 afterward?

12 A. No, they were after. He did that. I just
13 took the bar and left.

14 Q. Okay. So I believe you were saying that
15 Daniel Sanchez pointed to something?

16 A. Pointed to the bar.

17 Q. To this walker that we're seeing here in
18 Exhibit 89?

19 A. Yes.

20 Q. And what did he say?

21 A. "Get that right there."

22 Q. What was he referring to, "that"?

23 A. That bar.

24 Q. Okay. Now, was there a bar that we're not
25 seeing?

1 A. Right now, yes, it's missing right now.

2 Q. And where was it at?

3 A. You see on the left side where there is a
4 piece of sheet?

5 Q. Yes.

6 A. Okay. There is a left side, the right
7 side, you can't really see it -- there is a piece of
8 sheet tied there, too.

9 Q. Right over there?

10 A. It connects those two -- the piece --
11 yeah, exactly, the pieces of metal that come from
12 the walker on each side slide up next to each other,
13 and the screw goes -- the bar has a threaded end of
14 it, and the bolt's on the opposite side.

15 Q. All right. And so --

16 And 90 is in? Can we display 90? All
17 right.

18 The same walker?

19 A. Yes.

20 Q. And how do you recognize it again?

21 A. The streamers on the side.

22 Q. And so I'm going to draw a line from one
23 piece of white to the other. Did there used to be a
24 bar there?

25 A. Yes, there was.

1 Q. And what did you do?

2 A. I took it off.

3 Q. How did you take it off?

4 A. All right. When Daniel Sanchez told me to
5 get it, I waved to the CO in the bubble; told him to
6 open his door. I opened the door. The CO opened
7 the door.

8 Q. Okay. So when Mr. Sanchez says, "Get
9 that," is the door closed?

10 A. The door is closed.

11 Q. And can you see into the cell?

12 A. Yes. There's windows. The same windows
13 that are in each front pod door are in each cell,
14 long rectangles.

15 Q. And I'm going back just for a minute.
16 When you had walked by before and Mr. Sanchez was
17 talking to Mr. Perez, were the doors open or closed?

18 A. Closed.

19 Q. Okay.

20 A. You can only have one door open at a time.

21 Q. Can you have a conversation through the
22 doors?

23 A. Yes.

24 Q. Okay. So did it appear to you, even
25 though you're not part of conversation, that Mr.

1 Sanchez was having a conversation with Mr. Perez?

2 A. Yes.

3 Q. Now, then, you're called back over. The
4 door is still closed?

5 A. Yes.

6 Q. And then when Mr. Sanchez said, "Get
7 that," how could you tell what he was referring to?

8 A. Because the walker was sitting back by the
9 toilet, and he was pointing to it.

10 Q. So you could see it?

11 A. Yeah, I seen -- when I seen -- when I
12 looked at it, that's the first thing I seen, was the
13 long bar.

14 Q. Okay.

15 A. He was pointing -- it's obvious what we're
16 looking for.

17 Q. So then you motioned for the door to be
18 opened?

19 A. Right.

20 Q. And then is the door opened?

21 A. The door is opened. My door is closed.
22 Cell 111 is closed, and they open up Rudy Perez'
23 door.

24 Q. Okay. Again, because you said only one
25 door could be opened at a time?

1 A. Yes.

2 Q. What time of the day is this, as far as
3 Corrections? Is this tier time? Rec time? What is
4 it?

5 A. It's open unit. Before, we were on tier
6 time. They just opened up all the cells now. So we
7 were just on pod restriction, pretty much. We all
8 just go use the phone, microwave, watch TV. You can
9 go to your room if you want. You can come out.

10 Q. And what time, approximately, was it? Let
11 me put it in reference to something. Was it before
12 count?

13 A. Yes, yes.

14 Q. And what time is count, again?

15 A. It might have been before -- it was
16 after -- it was around maybe 1:00 that this
17 happened. Let me see. Because we go to yard at
18 3:00, so this was around 2:30, 2:00.

19 Q. Okay. So you motion to get in?

20 A. Right.

21 Q. Okay.

22 A. Okay. So Rudy is right there. I get the
23 walker. And I put it up, like, on the bunk. I tilt
24 it sideways. And when I was trying to take the bolt
25 off, I turned around to ask Dan for some nail

1 clippers or something. He was gone. He left the
2 cell.

3 Okay. So I got some nail clippers that
4 were right there. I started taking it off. And
5 then Rudy tells me, "I'm down for whatever, as long
6 as it's not me. I'm down for whatever."

7 I told him, "Don't worry about it. It's
8 all good."

9 I was just getting the pole off. I got
10 it. I put it on the long side of my pant leg, and I
11 walked out.

12 Q. When he said that to you, a regular,
13 normal tone?

14 A. Yes.

15 Q. Anything unusual about the way he spoke,
16 as far as his mannerisms or anything else?

17 A. No.

18 Q. Now, I'm going to show you -- you
19 indicated that you had to unscrew it?

20 A. Right.

21 Q. What do you do -- you said you put it in
22 your pants?

23 A. Right.

24 Q. And what do you do with them?

25 A. I go to my cell. Before I go to my cell,

1 I get by that same stoop that Dan and I read the
2 paperwork at. I looked up, and Dan Dan had locked
3 himself in his room. So I go to my cell, and I put
4 it in my hamper.

5 Q. Why did you put it in your hamper?

6 A. Just to have it for -- I was going to
7 break it up for cuenta, for count, for the one-hour
8 count.

9 Q. So do you leave it there?

10 A. I leave it there until they're about to go
11 to yard. I went into my room. They were going to
12 go to phone yard, which was at 3:00.

13 Q. Okay.

14 A. So I pulled my curtain up in my room, and
15 begin breaking it.

16 Q. Why do you put your curtain up in your
17 room?

18 A. So no one could see in. No one could see
19 my room. I put a towel with a spoon. And I bend
20 the spoon, and the tension keeps the towel in the
21 window. So if the CO is coming in, they want to
22 know what I'm doing, I just tell them I'm using the
23 restroom. None of the inmates seen me; Dan and I
24 are the only ones that knew, other than Rudy, that
25 the bar was missing. Dan and I only knew what was

1 going on with the bar.

2 Q. Okay. So you stay in the room for how
3 long?

4 A. I'm in the room before they go to yard.
5 And Javier Molina keeps telling me, "Let's go to
6 yard."

7 I told him, "I'm using the restroom. Just
8 go ahead."

9 He goes, "We're going to wait for you."

10 I said, "No, just go. I'm going to stay
11 in."

12 So they finally go, and I start putting
13 the bar -- there is a heater, and there is little
14 holes like grates, and I put it inside the hole, and
15 I begin breaking it, bending it back and forth.

16 Q. How many pieces do you break it into?

17 A. Three.

18 Q. I'm showing on the Elmo what is
19 Government's Exhibit 2. Can you see that item?

20 A. Yes.

21 Q. All right. And I'm going to pick it up --
22 it's Exhibit Number 2. All right. Now, I'm
23 pointing to the left side of it, which is -- has a
24 tip at it?

25 A. Right, there's threading.

1 Q. Okay. Now, where would that threading --
2 where did you get --

3 A. That threading was on the ends. There was
4 threading on this end, threading on both, so the
5 right and left ends of the bar, which held it
6 together on the walker with the bolts.

7 Q. Okay.

8 A. The nuts.

9 Q. Did it have this sharp point?

10 A. No.

11 Q. Who did that?

12 A. I did.

13 Q. How did you do that?

14 A. I sharpened it on the floor.

15 Q. All right. I'm going to go to the other
16 end of it. Can you see that?

17 A. Yes. That's the end that I broke off from
18 the other one.

19 Q. Okay. You say "the other one." Are you
20 aware of this item?

21 A. Yes.

22 Q. What's that item?

23 A. That item is a rope that you tie to the
24 end of the weapon that goes around your wrist. So
25 when you're in one-on-one combat with another

1 inmate, you don't lose your shank, and it's not used
2 against you.

3 Q. Did you actually put it on that?

4 A. Yes.

5 Q. Referring to Government's Exhibit number
6 3, do you see that item?

7 A. I do.

8 Q. All right. Okay. This item is bent.

9 A. Right.

10 Q. Is this the way you retrieved it?

11 A. No.

12 Q. How was it when you retrieved it?

13 A. It was straight like the other one.

14 That's the end of the other one.

15 Q. Okay. I'm showing the --

16 A. It was straight.

17 Q. It was straight?

18 A. Yeah. There is no threading on the end of
19 that one.

20 Q. Okay. And was it pointed?

21 A. When I got it?

22 Q. Yes.

23 A. No. I did that.

24 Q. You did that?

25 A. Yes.

1 Q. And this part was straight?

2 A. Yes.

3 Q. Okay. Does it do -- at some point after
4 the homicide, do you get it and do something with it
5 that causes it to be in this condition?

6 A. Yes. Jerry Montoya throws it from the
7 bottom tier to the top tier. I picked it up, took
8 it to the shower, and began bending it to put it
9 down the drain. I took a razor blade to the handle.
10 I cut the handle off, and put it in the drain all
11 the way.

12 Q. Okay. So while you're making this into a
13 weapon, was it still straight?

14 A. Yes.

15 Q. And do you recall what eventually -- who
16 has this eventually?

17 A. Jerry Montoya. The reason why it's bent
18 is because the drain goes like an L, so I had to
19 bend it to go down the drain.

20 Q. Now, I'm showing you Government's Exhibit
21 Number 7. Are you familiar with this item?

22 A. Yes.

23 Q. How so?

24 A. That's the extra piece. And I believe
25 that one has threading on it that's untouched.

1 Q. Okay. On the right side of the screen,
2 where it's being displayed, is that the threading?

3 A. Yes, it is.

4 Q. What did you do with this item?

5 A. I put it in a honey jar with napkins and
6 threw it in the trash and covered it with a brown
7 paper bag.

8 Q. Is this --

9 A. There's napkins inside of it, yeah.

10 Q. So you put it in there?

11 A. Yes.

12 Q. Was this to be used by anyone?

13 A. Just extra, just to throw it away, to get
14 rid of -- I didn't know that the weapons were going
15 to be found, so that was just to throw it away.

16 Q. Where did you throw it away?

17 A. In the trash can.

18 Q. Where was the trash can?

19 A. Right there in the pod. When you're
20 going -- the stairs that are going upstairs, there
21 is a trash can right next to it.

22 Q. All right. So you make two weapons and
23 you have an extra piece that eventually you throw
24 away in the trash can?

25 A. Yes.

1 Q. How long did it take to make those
2 weapons?

3 A. About 30 to 45 minutes.

4 Q. And then at some time -- and you're doing
5 this during, as you say, cuenta?

6 A. I had broken down before cuenta, before we
7 locked down, because I had to come out and talk to
8 Timothy before cuenta. So when I broke them down
9 into pieces, I put them under my mattress. So when
10 cuenta came, I was sharpening them.

11 Q. Let's go back. You said you had to talk
12 to Timothy.

13 A. Right.

14 Q. Why did you have to talk to Timothy?

15 A. Because Dan told me to.

16 Q. Where had Timothy been, if you know?

17 A. He was at work at the wheelchair program.

18 Q. And at some time did he get done with the
19 wheelchair program?

20 A. Yes, right before, around maybe, I want to
21 say, about 3:30, 3:40.

22 Q. Okay.

23 A. They come about maybe 15, 20 minutes
24 before count.

25 Q. Okay. And what did you go tell Tim?

1 A. We sat on the table, and I told him, "Go
2 get high."

3 And he said, "Why?"

4 I told him, "Go get high. I'll tell you
5 later."

6 He said, "No, I'm not going to get high
7 today."

8 I said, "Just go fucking get high."

9 He looked at me, and he seen that I was,
10 like, I was kind of upset. He goes, "What's wrong
11 with you?"

12 Q. Why did you tell him to go get high? What
13 was your point in telling him to go get high?

14 A. It was probably the last time he was going
15 to get high for a while, because we were going to go
16 to Level 6.

17 "Just go get high," you know, "maybe numb
18 your feelings, whatever. I know he's your friend."
19 I told him, "Go get high."

20 He told me, "What's wrong?"

21 "Nothing. Let's go over here."

22 We went to the same stoop where me and Dan
23 read the paperwork. And he has his arm around me.
24 "What's up?"

25 I told him, "The paperwork is here."

1 And he goes, "Which one?"

2 I told him, "Just -- you ready?"

3 He goes, "Well, who?" He thought it was
4 Jerry Montoya.

5 And I kind of like shook my head, "Yeah,"
6 and I told him, "No. No, fucking Javier. Dan wants
7 you to knock him the fuck out."

8 He goes, "Why isn't Dan telling me?"

9 "You know why."

10 He goes, "Yeah, because if Dan would tell
11 me, I'll pop his fucking mouth." He goes, "Well,
12 are you down with it?"

13 I go, "Don't worry. If you're not, I'll
14 do it for you, and we'll just say you did."

15 And he goes, "No, if this is what the onda
16 needs me to do, I'll do it."

17 I told him, "All right. After count."

18 Q. Okay. Now, you said this conversation
19 took place -- and if it is, can we see somewhere on
20 Exhibit 752 where this conversation took place?

21 A. See cell 111?

22 Q. Yes.

23 A. That's my cell. Right there, directly,
24 drag your line to the corner. Right there -- no, to
25 the corner. Right there. There is a pole. And

1 then we sit right there, there is a stoop, like a
2 little seat.

3 Q. All right. And just for the record, on
4 752 I drew a circle around what would be to the left
5 of the second table there?

6 A. Yes.

7 Q. Okay. So you have the conversation there.
8 And I believe you indicated that you were willing to
9 do it for him?

10 A. Yes.

11 Q. And why were you willing to do that?

12 A. Because he's my friend and I didn't really
13 know if he had it in him either. I didn't want him
14 to get hit. And I knew that he was going to get
15 killed. And Timothy ain't -- he ain't your
16 prototype gang member.

17 Q. So what was his role again? You said to
18 knock him out?

19 A. Yeah, knock him the fuck out. Dan wanted
20 him to physically knock him out because Timothy had
21 MMA experience.

22 Q. Okay. Now, and you mentioned the other
23 two people that were going to get the shanks were
24 who?

25 A. Were Jerry Montoya and Jerry Armenta. I

1 told them that he was going to knock him out, and
2 the homies were going to go stab him; to make sure
3 he was outside of the cell before they came in.

4 Q. Now, did Mr. Martinez -- did he agree to
5 go along with it?

6 A. He said, "If this is what the onda needs
7 me to do, I'll do it."

8 Q. So how big, in relationship to Timothy
9 Martinez, is Javier Molina?

10 A. Well, Timothy is taller than him, more
11 physically fit. Javier Molina had gotten -- had put
12 on a lot of weight over the years, and he was
13 shorter.

14 Q. Okay. Now what about Jerry Armenta and
15 Jerry Montoya?

16 A. Jerry Armenta is about the same height,
17 not as physically fit as Timothy. And Jerry Montoya
18 is a smaller guy.

19 Q. Okay. Why -- I guess in the plan that
20 was -- why was it necessary to knock out Javier
21 Molina?

22 A. Because we felt that they couldn't take
23 Molina by themselves. If Molina was conscious,
24 we -- or not stunned -- we didn't believe that Jerry
25 Montoya and Jerry Armenta could take him out.

1 Q. Okay. "We" being who?

2 A. Me and Daniel Sanchez.

3 Q. Was that something you discussed?

4 A. Yes. Because I had concerns about them
5 two individuals committing the crime. And he said,
6 "No, they'll get it done."

7 Jerry Armenta was his homie. He said,
8 "No, I've been working out with him. He's ready."

9 Q. Okay. And so were you given the task to
10 tell anybody else?

11 A. I was just supposed to tell Timothy
12 Martinez.

13 Q. So then after this conversation --

14 A. With Timothy.

15 Q. -- with Timothy, what do you do?

16 A. Okay. After that conversation, the guys
17 from the phone yard: Daniel Sanchez, Jerry Armenta,
18 Montoya, Michael Hernandez, Jeffrey Madrid, and all
19 them came from the phone yard. We should be locked
20 down, go to cuenta, 4:00 count.

21 Q. And that's when you make the weapons?

22 A. That's when I begin making the weapons.

23 Q. How long does count last, again?

24 A. An hour.

25 Q. So 5:00, count is over?

1 A. Right.

2 Q. What happens at that point?

3 A. Once the doors crack, I come out and I go
4 up the stairs to the day room area, where it says
5 "common area." I go to the last cell over by Ronald
6 Sanchez. There is a railing. I jump on the
7 railing, and I pull myself up to the top tier, and I
8 go to Timothy Martinez' house.

9 And he's walking back and forth. And I
10 told him, "Are you ready?" I told him, "Don't worry
11 about it. I've been in this position. Don't worry
12 about it. You're going to be all right."

13 Q. I just put on the screen 751, which is the
14 upper level?

15 A. Right. See the lower walkway?

16 Q. Yes.

17 A. The line below is a railing, and the line
18 above it is a railing. I pulled myself up to the
19 top tier. And I told Timothy, "Are you ready?
20 Don't worry. I've been in this position before.
21 Don't worry. You're going to be all right. I'll be
22 there with you."

23 And then he told me that he had gotten
24 Javier Molina's shank. It was in the canteen bag.
25 He told me, "Take the canteen bag."

1 So I take the canteen bag. As I'm going
2 on the upper walkway, I go all the way around to the
3 top tier stairs, where it says "Up."

4 Q. Okay. Here?

5 A. I go down the stairs. Then I go back to
6 my cell 111. And when I go to my cell, Daniel
7 Sanchez and Jerry Armenta comes in right behind me.

8 Q. So now -- and Tim gave you, just so we're
9 clear, Javier Molina's shank?

10 A. Yes.

11 Q. So then you go back down to yours, which
12 is 111?

13 A. Right.

14 Q. And who is there?

15 A. Right when I go in, I set the canteen on
16 the bed. And here comes Daniel Sanchez and Jerry
17 Armenta. And he asks me, "You got them ready?"

18 I said, "Yeah."

19 Q. What was ready?

20 A. If I had made the shanks, if they were
21 ready. Daniel Sanchez asked me. I was about to put
22 them in my socks to go to their cells. And I just
23 handed them to them right there.

24 Q. Handed it --

25 A. To Jerry Armenta.

1 Q. Okay.

2 A. Then he goes -- Daniel Sanchez goes, "Did
3 you tell Plazi?" which is a nickname for Jerry
4 Montoya -- and I looked at him. I said, "No."

5 I got kind of, like, mad because he was
6 the one that was supposed to tell him.

7 He said, "Well, tell Plazi."

8 He's supposed to tell Jerry Montoya and
9 Jerry Armenta. I'm supposed to tell Timothy
10 Martinez.

11 So I go to Jerry Montoya's cell, 113. I
12 walk --

13 Q. Which is right here?

14 A. Right.

15 Q. Okay.

16 A. I walk all the way to the back of the
17 cell. He's in there. And I put my hand down my
18 pants and I pull out the fucking fierro, and tell
19 him, "It's your time."

20 Q. What's a fierro?

21 A. The shank. And he puts his hands in the
22 air. I guess he thought we were going to stab him.
23 So he puts his hands, and I told him, "It's your
24 time."

25 He goes, "Well, what's up?"

1 I told him, "The paperwork is here.
2 You're going to hit Molina, Javier."

3 And he told me, "You've seen it."

4 I told him, "I seen it."

5 "Where is it at?"

6 Q. Okay. And what did you take "where is it
7 at" to mean?

8 A. The paperwork.

9 Q. What did you say?

10 A. I told him, I said, "We already seen it,
11 Dan and I seen it. It's already next door. Don't
12 worry about it. We've seen it."

13 Q. Okay. When you said, "It's already next
14 door," what were you referring to?

15 A. I sent it back to Lazy and Lupe Urquizo.

16 Q. So then what happened?

17 A. What happened after that, I told him to
18 get into his greens, his uniform, his state-issued
19 pants and shirt.

20 Q. And why did you tell him to do that?

21 A. For the blood. There was going to be
22 blood. And so the cameras -- they were both
23 supposed to be greens so they couldn't identify
24 them.

25 Q. And so did he eventually change?

1 A. He did.

2 Q. And did you leave the shank with him?

3 A. I did.

4 Q. Where did you go after that?

5 A. I went and talked to Timothy again, I
6 think.

7 Q. And what did Timothy tell you?

8 A. He said was going to choke him out.

9 Instead of knock him out, he was going to choke him
10 out.

11 Q. Okay. Was that different from the plan?

12 A. Yes.

13 Q. Okay. So what did you do at that point?

14 A. I went and spoke to Dan Dan. I went and
15 told him, "Hey, the homie is going to choke him out.
16 And I'm going to be right there, and he's going to
17 choke him out."

18 And that's when he told, he goes, "Make
19 sure it goes right, and don't forget the dope."

20 Q. What did he mean by that?

21 A. Because we were going there to shoot up
22 Suboxone.

23 Q. Was that -- did you come up with a plan to
24 get into Molina's cell?

25 A. Yes. Through -- we usually went and did

1 drugs in there or tattooed in Molina's cell. He
2 always had his door open. So it wasn't unnatural
3 for us to be in there, especially me and Timothy.
4 It was planned that way for -- the closest people to
5 you are the right ones to kill you in the SNM.

6 Q. So what do you do?

7 A. At that point?

8 Q. Yes.

9 A. I think right before, we were sitting at
10 the bottom tables, and I go, "Are you ready," to
11 Javier Molina, Timothy Martinez. And Daniel Sanchez
12 knew what we were doing, so he goes, "Well, can I
13 go?"

14 And I looked at him, like, You know what
15 the fuck we're doing, you know. Why do you want to
16 go? You know what's going on.

17 And he's putting me in a situation where I
18 have to tell him, "No." It was an awkward
19 situation. I just looked at him. "No, we're going
20 to go."

21 So he went up to his cell, and I had the
22 Suboxone. It was in Saran Wrap. I was opening it,
23 and I couldn't get open. So Molina grabbed it out
24 of my hand and started opening it. I just looked at
25 him. "It's all right."

1 Q. The conversation, "Can I go," were you
2 guys referring to, when you say "you guys," you were
3 going to go up to do the drugs?

4 A. Yeah, he wanted to go get high with us.

5 Q. When he said, "Can I go," you took that to
6 mean he was going to go to drugs with you?

7 A. Right. He wanted to go do a shot with us.

8 Q. Because he had already mentioned that you
9 were to get the dope?

10 A. Right.

11 Q. Afterwards.

12 A. After I spoken to him about changing the
13 plan, he said, "Don't forget the dope." There is a
14 joke, like, CIC getting drugs, halfers, halfers.
15 When I was walking away, he was telling me
16 "halfers." So he knew the plan, and he was trying
17 to -- I don't know what the fuck he was doing when
18 he told me that.

19 Q. Okay.

20 A. So we go up there. And I'm opening the
21 Suboxone. I can't get it. So Molina pulls it away
22 from me. And I look at Timothy, and I'm waiting for
23 him to get him. I go like that, and he doesn't do
24 nothing, so I thought Timothy was going to wait till
25 we do the shot.

1 Q. Okay. And so you were in Molina's cell
2 now?

3 A. We're in Molina's cell.

4 Q. And who is there?

5 A. Myself, Timothy Martinez, and Javier
6 Molina.

7 Q. Okay. What happens?

8 A. I nodded to him again. And he didn't do
9 nothing. So like I said, I nodded to him like two
10 or three times, and nothing happened. So I assume
11 we're going to do the drugs. And the next thing I
12 know, I hear like a thump, thump. Timothy grabbed
13 him and started choking him out. He dropped the
14 syringe and the Suboxone. He had already opened the
15 Suboxone. At that time it was in the spoon. He
16 dropped the syringe next to the spoon.

17 Q. Who is "he"?

18 A. Javier Molina.

19 Q. Okay.

20 A. When Timothy grabbed him, he looked like
21 he was in shock, like he didn't know what the fuck
22 was going on.

23 Q. Who is "he"?

24 A. Javier Molina.

25 Q. Okay.

1 A. Then he reached his hands up to try to
2 grab Timothy Martinez' hands. And I grabbed his by
3 the wrists, and I pulled him down, and I leaned in
4 to him. And I seen him go unconscious. And I told
5 Timothy to lay him down. Timothy went to lay him
6 down. I turned. And when I went to wave in Armenta
7 and Montoya, they were already on their way in. And
8 I was telling Timothy, "Get the fuck out of the
9 room. Go."

10 And he went around, he stepped on the
11 bunk, and I think he left. When they came into the
12 room, they started stabbing him. Javier Montoya got
13 on top of him and started stabbing him on the
14 chest --

15 Q. Sorry. You said Javier got on top --

16 A. I mean Jerry Montoya. Jerry Montoya got
17 on top of him and started stabbing him in his chest.

18 Q. And was Javier standing up at this time?

19 A. No, he was laying down. He was
20 unconscious.

21 Q. Okay.

22 A. So I reach over and I grab the spoon with
23 the Suboxone and the syringe off the table, and I go
24 to leave the room. And I look back, and I see him
25 stabbing him.

1 Then the next thing I know, Molina is up,
2 standing up. So I walk back to the cell. And
3 Montoya tries to give me the shank. And I told him,
4 "Get him. Don't let him out of the fucking room."

5 Right when I turned around, Molina ran
6 right through them on the tier.

7 Q. Okay.

8 A. He started coming out of the room. And
9 Molina says, "All right, carnals. You got me."

10 And I told him, "You ain't our fucking
11 carnal."

12 And I told Jerry Montoya, "Go get him.
13 Get him."

14 And I heard Daniel Sanchez telling Creeper
15 to go get Molina, as well.

16 Q. Okay. So Javier is leaving his cell, and
17 what does he tell you?

18 A. "You got me, carnals. You already got
19 me."

20 Q. I thought he said something about "all
21 right"?

22 A. Oh, yeah, "Right, you got me, carnals."

23 I told him, "You ain't our fucking
24 carnal."

25 Q. So then where does he go?

1 A. He goes to the top tier stairs. And he
2 goes down to the front door. And Montoya and
3 Armenta proceed to stab him down at the bottom door.

4 Q. And I believe you said something about you
5 overheard Daniel Sanchez?

6 A. Yeah, he was telling Creeper to go get
7 him.

8 Q. Who is Creeper, again?

9 A. Creeper is Jerry Armenta.

10 Q. Is that the person that you said was close
11 to Daniel?

12 A. Yeah, that's Dan's homie.

13 Q. Okay. And then what happened? Were you
14 able to see what happens?

15 A. No. When the shank got thrown to the top
16 tier, I went to the shower. I picked it up. And it
17 hit the roof -- it hit the wall next the roof, and
18 hit the floor. I picked it up and went to the
19 shower and started breaking it down to get it in the
20 shower drain. The plan was that Daniel Sanchez was
21 supposed to take care of Armenta's shank. I was
22 supposed to take care of Montoya's.

23 Q. Now, so you then go into the shower?

24 A. Right. Top-tier shower.

25 Q. And is that where you stick the shank?

1 A. I do, in the shower drain.

2 Q. Is it bent?

3 A. It's bent. I bended it on my shin. I
4 started bending it on my shin. And as I put it into
5 the shower drain, I started bending it.

6 Q. Now, at some point, do you know whether or
7 not -- you said you overheard Daniel Sanchez saying
8 something to the effect of, "Go get him"?

9 A. "Get him, Creeper; Get him, Creeper."

10 Q. Do you ever know or see Daniel Sanchez
11 going and talking to anybody in the yellow pod?

12 A. When I was coming out of the shower, he
13 went to the top-tier shower and said something like,
14 "How do you like that, baby?"

15 And then, when we're locking down, someone
16 yelled back, "Fuck, yeah, Dan."

17 Q. Now, have you seen the videos in this
18 case?

19 A. Yes, I have.

20 Q. And we're going to go to, I believe, the
21 first camera view and it's Exhibit Number 11.
22 Camera 4.

23 All right. And now there's two
24 different -- this exhibit has two different cameras,
25 so this is camera 4 that we're looking at. And I

1 believe this is at the beginning. Okay. And this
2 is at 17:29:59:406. And if you can start playing
3 it. It's at the end. Can we get to the beginning?
4 Sorry.

5 All right. Now we're at 17:14:59:390.
6 Okay. Before we start that -- I know it's kind of
7 grainy -- but do you recognize anybody on the top
8 level?

9 A. Yeah, the one in the white shirt is Javier
10 Molina, and the one next to him is Timothy Martinez.

11 Q. Okay. So this would be approximately
12 5:00, almost 5:15 in the evening; is that correct?

13 A. Yes.

14 Q. Okay. And we're going to play it.

15 (Tape played.)

16 Q. Okay. If we can stop it, and it is
17 17:15:37:421 frame. There is a gentleman that came
18 into the camera. Who is that in the green on the
19 bottom?

20 A. That's Jerry Montoya in his greens. And
21 he already has the shank at that time.

22 Q. Okay. If we could keep playing it.

23 (Tape played.)

24 Q. If we could stop just briefly. All right.
25 From the last segment to this segment, we're now at

1 17:15:53:421. You saw some people coming out from
2 the lower level. Do you know who they were?

3 A. That's the nurse, Ms. Lammond. Right
4 there in front of her is Jeffrey Madrid, and I think
5 behind the CO coming down the stairs is Jerry
6 Armenta, behind the CO. Yeah, there he is.

7 Q. Okay. Pause it. I'm going to go to the
8 right hand of the screen, and we're at 17:16:05:421.
9 What is it that we're looking at?

10 A. Javier Molina asked me for the syringe.
11 I'm stepping up on the rail and giving it to him.

12 Q. So I'm marking an X on the person in the
13 middle there. Is that you?

14 A. That's me.

15 Q. And the person on the top is Javier
16 Molina?

17 A. Yes, ma'am.

18 Q. And who is it on the bottom, if you know?

19 A. Jeffrey Madrid.

20 Q. All right. Let's continue on.

21 (Tape played.)

22 Q. If you can stop.

23 All right. We're now looking at

24 17:16:20:406. Who is this person on the left hand
25 that's going up?

1 A. That's me.

2 Q. And where are you coming from?

3 A. Coming from the table. I think I was
4 talking to Dan Dan.

5 Q. Okay. And who is this next to you that's
6 going down?

7 A. That's Jerry Montoya.

8 Q. And on the top right of the picture, who
9 is it over here?

10 A. That's Mr. Molina calling me to his room.

11 Q. Okay. If we could continue on.

12 (Tape played.)

13 Q. All right. If you can stop.

14 Now we're at 17:16:55:406. At the top
15 right screen you can see part of the doorway. Do
16 you know whose doorway that is?

17 A. That's Mr. Molina's.

18 Q. And can you see that better from the other
19 camera?

20 A. Yes, you can.

21 Q. And then who is standing outside of it?

22 A. Molina.

23 Q. Where are you at this time?

24 A. At that time, I think --

25 Q. If you don't know, we can play on a little

1 bit. I don't want you to guess.

2 A. I think I'm in Timothy's room at that
3 time.

4 Q. Who is coming down the stairs?

5 A. Armenta, Jerry Armenta.

6 Q. All right. Just clear this. All right.

7 I'm going to pause it there. There is
8 somebody, and it's 17:17:42:406. There is somebody
9 here on the table. Do you know who that is?

10 A. Yes, that's me after I finished talking to
11 Timothy Martinez about choking him out, or Timothy
12 told me he was going to choke Molina instead of
13 knocking him out. That's -- I'm talking to Dan
14 about it right then.

15 Q. Who are you talking to?

16 A. Daniel Sanchez.

17 Q. Who is on the top level?

18 A. Jerry Montoya.

19 (Tape played.)

20 Q. All right. Stop it. At 17:18:23, we saw
21 somebody leave the table and go up the stairs, and
22 now they're headed towards the right of the frame.
23 Who is that?

24 A. That's going up the stairs?

25 Q. Yes.

1 A. That's me. We're going to Molina's cell;
2 myself, Molina, and Timothy Martinez.

3 Q. And there is a gentleman on the top right
4 of the picture frame. Who is that?

5 A. Molina.

6 Q. Okay. Continue on.

7 (Tape played.)

8 Q. And are you in the cell at this time?

9 A. Yes, I am.

10 Q. So I'm going to stop, and we're now at
11 17:18:59:406. We see two gentlemen on the left side
12 of the picture. Who are they?

13 A. Jerry Montoya and Jerry Armenta.

14 Q. Jerry Montoya is which one?

15 A. The one coming up the stairs.

16 Q. Okay. What's going on at this time?

17 A. They were told to sit there, I think by
18 Daniel Sanchez, to sit there until they see what's
19 going on in the room, or I call them to see. Until
20 he's knocked unconscious, then they go in.

21 Q. And what are you doing at this point in
22 time?

23 A. I think that's at the point in time where
24 I'm trying to open the Suboxone, and Molina pulls it
25 away, grabs it away from me, and starts opening it.

1 So all this is going on. I'm standing the closest
2 to the front door. Molina is in the middle, and
3 Timothy is behind him. We're standing at the desk.

4 Q. Okay. So this is about the time that
5 Molina is going to be going unconscious?

6 A. Yes, ma'am.

7 Q. All right.

8 (Tape played.)

9 Q. 17:20:02:406. And I believe that Armenta
10 and Montoya just get up and are going; is that
11 right?

12 A. Yes.

13 Q. Where are you at this point in time? Are
14 you still in the room?

15 A. I'm still in the room and waving them in
16 up against the bunk, and Molina is laying on the
17 floor, and Timothy is back behind his head.

18 Q. Okay.

19 (Tape played.)

20 Q. I'm going to stop right there.
21 17:20:28:406 and I believe somebody came out of the
22 room and is now headed towards the left side of the
23 picture frame. Who is that?

24 A. That's Timothy Martinez, and I think I'm
25 in the doorway.

1 Q. Okay.

2 A. I think that was after grabbing the
3 Suboxone and the syringe. Timothy Martinez' photo
4 album was on the bed and I grabbed it to take it
5 out.

6 Q. What kind of photo album was it?

7 A. It's a photo album with a bunch of naked
8 pictures of women.

9 (Tape played.)

10 Q. If you can stop right there, there is a
11 person on the top right -- I mean the top part of --
12 middle part of the screen. Who is that?

13 A. The top tier?

14 Q. Yes.

15 A. That's me.

16 Q. And that's 1:20:41:406. Okay.

17 (Tape played.)

18 Q. Okay. Stop. Now, there was in -- this
19 frame is 17:20:55:421, there is a person on the top
20 left part of the screen that I'm circling right now,
21 above where it says 1-A. Who is that?

22 A. That's Javier Molina.

23 Q. And did we just see him run by you?

24 A. Yes.

25 Q. Okay. And where are you?

1 A. I'm against the rail in the white shirt.

2 Q. Is this you?

3 A. Yes.

4 Q. Okay. And where are Jerry Armenta and
5 Jerry Montoya?

6 A. Jerry Armenta is in the white shirt
7 towards the right, and Jerry Montoya is right behind
8 me.

9 Q. Okay.

10 A. At this point, this is where he says, "All
11 right, carnals, you got me," when he's about to turn
12 down the rail, down the stairs.

13 Q. Go ahead.

14 (Tape played.)

15 A. Right here.

16 Q. Okay. He turned back there, and now we're
17 at 5:21:01:42. Is that you on the top?

18 A. Yes.

19 Q. Above where it says "pod"?

20 A. Yes, ma'am.

21 Q. Okay. And is this Javier Molina on the
22 bottom there?

23 A. In the white shirt?

24 Q. Yes.

25 A. Yes, ma'am.

1 Q. Okay.

2 (Tape played.)

3 Q. Okay. If you can stop at 17:21:16. And I
4 believe at this point we have -- is that Jerry
5 Armenta at the bottom?

6 A. That's Jerry Armenta in the white T-shirt,
7 and Jerry Montoya who just flipped me the shank and
8 went down the bottom tier.

9 Q. Okay. So he's now at the bottom tier, and
10 where are you headed to at this point?

11 A. To the shower, to dispose of the weapon.

12 Q. Okay. And so at this point Montoya gave
13 you the weapon already?

14 A. He threw it up. He flung it up to the top
15 tier.

16 Q. Okay. And what did Armenta do when he
17 walked by the trash can; do you know?

18 A. I think he -- well, he dropped a weapon in
19 there. It wasn't supposed to happen.

20 Q. What was supposed to happen with it?

21 A. Daniel Sanchez was supposed to take care
22 of it. I gave him a razor blade and told him how
23 the drains went, and the razor blade was to cut the
24 handle off. He seemed kind of surprised that I was
25 telling him to do that.

1 Q. Was this before?

2 A. This was before, yes. I told Armenta that
3 I was going to take care of Montoya, and Dan Dan
4 would take care of his, Armenta's; I would take care
5 of Montoya.

6 Q. Okay. So you can play it.

7 (Tape played.)

8 Q. We can stop this one. And if we go to
9 camera 5 of Exhibit Number 11.

10 All right, Mr. Rodriguez. Are you
11 familiar with this scene? On the top it says CH05,
12 which I believe is camera 5 and it says 17:15:03?

13 A. Yes.

14 Q. Okay. So this is obviously before the
15 incident?

16 A. It is.

17 Q. And who do we see in this picture?

18 A. On the bottom tier, it's myself and Daniel
19 Sanchez; and on the top tier is Javier Molina and
20 Timothy Martinez.

21 Q. Okay. And this picks up at the same --
22 just a different angle from channel 4?

23 A. Yes.

24 Q. And in this picture, can we actually see
25 Javier Molina's cell?

1 A. Yes, you can.

2 Q. And where is it?

3 A. It's to the right of him. Yes, right
4 there.

5 Q. So that's Javier Molina's cell?

6 A. Yes, ma'am.

7 Q. And I believe you said to the right of
8 him, so I'm circling now the gentleman above 1-A in
9 the picture. Is that Javier Molina?

10 A. Yes, it is.

11 Q. So at this point in time before this
12 starts, does Armenta and Montoya -- do they have
13 their shanks?

14 A. They do.

15 Q. Okay. And then I am going to -- if we can
16 play it.

17 (Tape played.)

18 Q. And the person -- just so that we're
19 clear -- at the bottom talking to you with the white
20 socks and white tennis shoes -- who is that?

21 A. That's Daniel Sanchez.

22 (Tape played.)

23 Q. And if we can fast-forward a little bit.

24 (Tape played.)

25 Q. All right. We're now at 17:16:34, who do

1 we see there at the bottom?

2 A. You see Daniel Sanchez.

3 Q. Okay.

4 A. I think right behind him is Montoya
5 sitting on the stoop. You can't see him right now,
6 but right there by his right leg.

7 Q. Okay.

8 A. Yeah, there he is, right there. He's
9 talking to him.

10 Q. Do you know what's going on at this time?

11 A. With who?

12 Q. Somebody just walked out.

13 A. That was me going to Timothy Martinez's
14 house.

15 (Tape played.)

16 Q. I'm going to pause it at 17:17:31:656.
17 And there is four gentlemen at the bottom of the
18 screen. Who are the middle two?

19 A. Me and Daniel Sanchez.

20 Q. Where did you come from?

21 A. I came from Timothy Martinez's cell.

22 Q. And what are you doing at this point in
23 time?

24 A. I'm letting Dan Dan know that Timothy is
25 going to choke him out.

1 Q. Okay. And why were you telling him that?
2 Was the plan different initially?

3 A. The plan was initially that he just said
4 to have Timothy "knock him the fuck out," which we
5 took as to physically assault him with his fists.

6 Q. Okay. And is this the point where you're
7 telling Mr. Sanchez the change in the plan?

8 A. Yeah. He tells me, "Make sure it goes
9 right and not to leave the dope."

10 Q. Okay.

11 (Tape played.)

12 Q. Okay. And it is now 17:18:21:39. I
13 believe you just got up and you're going back up?

14 A. Yes.

15 Q. All right. Now, for the rest of the time
16 that you go up and you're in Mr. Molina's cell,
17 where does Mr. Sanchez stay?

18 A. Right there with his brother.

19 Q. And there's three tables that we can see
20 in this view. The first two tables that I just made
21 two dots on -- were those the two tables in channel
22 4's views?

23 A. Yes, ma'am.

24 Q. So this is just an extended view?

25 A. Yes, ma'am.

1 Q. And you said he's there with his brother?

2 A. Right.

3 Q. Is that the person sitting down right
4 here?

5 A. Yes, it is.

6 Q. The person on the bottom right? And is
7 that the person that you said was Ronald Sanchez?

8 A. Yes, ma'am.

9 Q. All right. And then what are you doing?
10 Are you going back up?

11 A. Going back up. Timothy Martinez is going
12 to come from his cell and we're going to enter
13 Molina's cell.

14 Q. Is that Molina up on the top?

15 A. Yes, ma'am.

16 (Tape played.)

17 Q. And there is a person that just came from
18 the right-hand side of the screen and what -- we
19 stopped it now at 17:18:30. Who is that person?

20 A. That was Timothy Martinez.

21 (Tape played.)

22 Q. So does the door remain open?

23 A. It does. When you see me come out
24 earlier, it's because I'm telling the CO to leave
25 the door open.

1 (Tape played.)

2 Q. What is going on at this time?

3 A. You can see the shadows right there. The
4 CO is wiggling the door. When they want you to
5 hurry up, close the door, they start wiggling the
6 door. I come back out and I tell them to hold on.
7 Then you're going to see shadows on the white part
8 of the cell. That's when Timothy starts to choke
9 him out. Right now, I think, yeah.

10 (Tape played.)

11 Q. Stop it. It's now 17:20:04, and we now
12 see -- is that Jerry Montoya and Armenta?

13 A. Yes, ma'am.

14 Q. Okay. And it appears as if they're headed
15 where?

16 A. To Molina's cell.

17 Q. Why were they headed to Molina's cell?

18 A. Because he's unconscious and I was calling
19 them in.

20 (Tape played.)

21 Q. The cell door remains open?

22 A. Yes.

23 (Tape played.)

24 Q. Okay. Can you stop.

25 All right, at 17:20:31:390, who is at the

1 bottom of the screen?

2 A. Daniel Sanchez. And -- the bottom tier?

3 Q. Yes.

4 A. And his brother, Ron.

5 Q. And Mr. Sanchez has his back towards us?

6 A. He's looking up to the Molina cell.

7 Q. And who is it that -- who is the person in
8 the white that we can see with the pants?

9 A. On the top tier?

10 Q. Yes.

11 A. That's me.

12 Q. Okay.

13 (Tape played.)

14 Q. I believe this is 17:20:54:406, and there
15 is a person on the left-hand side. Looks like
16 something with a white shirt with something on the
17 shirt. Who is that?

18 A. That's Javier Molina.

19 Q. What did he have on his shirt?

20 A. Blood.

21 Q. And who is the person in the white to the
22 right of him?

23 A. That's me.

24 Q. Okay. And who is standing next to you, if
25 you can tell?

1 A. Jerry Montoya.

2 Q. And who is the person coming out of
3 Mr. Molina's cell?

4 A. Jerry Armenta.

5 Q. Okay. And who is the bottom person that's
6 standing up there with the white shirt on the bottom
7 level?

8 A. Daniel Sanchez.

9 Q. All right. And I believe -- go ahead.

10 (Tape played.)

11 Q. All right. Pausing. It's at 17:21:16.
12 Was that just like a second or two before when the
13 shank was flipped up to you?

14 A. Yes.

15 Q. And it would have been right here where it
16 says "pod" on the left-hand side?

17 A. It was in between the two cells on the
18 top. Do you see the two blue doors? It hit the
19 roof, the wall right above those doors, and then
20 bounced and hit the floor.

21 Q. That's when you pick it up?

22 A. That's when I pick it up.

23 Q. Okay. And I don't believe that we can see
24 anything else on this from what's happening on the
25 left-hand side; correct?

1 A. No.

2 Q. Okay. Now, after you went to the shower,
3 did you -- and you put the shank in there, what did
4 you do after that?

5 A. I came out and went to lock myself in, go
6 to my cell for lockdown.

7 Q. Now, we saw Daniel Sanchez in front of the
8 camera. Was that part of the plan? Or what was the
9 plan?

10 A. I wasn't in on that part of the plan. I
11 didn't initially take no mind to it or attention to
12 it until a lot of the carnals started pointing it
13 out to me.

14 Q. Okay. Now, at some point do correctional
15 officers respond?

16 A. They do.

17 Q. Police respond?

18 A. They come in and I go to lockdown.
19 They're saying that there is a spot of blood outside
20 my house. So I got a hand sanitizer with water and
21 threw it out to dilute the blood. And I covered my
22 window. I covered my window. I started arguing
23 with the CO when he started trying to take pictures
24 of me. I covered my window with a towel. And I ate
25 some food. I had the syringe. I was trying to wrap

1 up the syringe to keister it.

2 Q. What do you mean by "keister it"?

3 A. I was going to put it in my rectum with
4 Saran Wrap. And then I bent down, I don't remember
5 why, and I seen that I had blood on my greens.

6 Q. What are your greens?

7 A. My state-issue pants.

8 Q. Okay.

9 A. On my right shin, I had blood from bending
10 the weapon while I was in the shower. So when I
11 took off my pants, I seen I had Molina's shank
12 still. Because when I got it from Timothy, I put it
13 on my bunk, and I went to the canteen. And I pulled
14 the shank out and put it in my sock.

15 So when I seen that, I took the handle off
16 it, and I put it on the corner of the desk. And I
17 went to bend it. I bent it in half. I went to
18 Saran Wrap it. And I had a lot of -- what do you
19 call it? I wasn't calm at the time. I was real
20 anxious, going -- trying to move fast.

21 Q. What did you do with the pants?

22 A. I threw them in my sink, with extra hand
23 sanitizer and toothpaste and started washing them.
24 And I got the Saran Wrap to try to wrap up the
25 weapon. It was bent in, like, a U, about maybe two

1 and a half inches long, bent.

2 Q. And whose weapon was that?

3 A. Javier Molina's.

4 THE COURT: Ms. Armijo, would this be a
5 good time for us to take our lunch break?

6 MS. ARMIJO: Sure.

7 THE COURT: All right. We'll be in recess
8 for about an hour. All rise.

9 (The jury left the courtroom.)

10 THE COURT: All right. Everyone be
11 seated.

12 I spent a lot of time watching Mr. Perez
13 since Ms. Fox-Young was up here. As I noted, Mr.
14 Perez is closest to me as far as the defendants.
15 And he sits on the corner of the chair that's right
16 in front of my court reporter, so I'm able to
17 observe a lot of his body. I can't see his feet but
18 I can see his hands and things like that. So I am
19 able to watch him.

20 As far as my notes indicate, he didn't
21 cough at any time since Ms. Fox-Young was up here.
22 Several times as the witness was testifying, he
23 would turn his head to the witness and observe the
24 witness. Then when it was appropriate to be looking
25 at a screen, he was looking at the screen. So he

1 looked very engaged to me.

2 I counted three times that he reached over
3 and got water, which required him to then adjust the
4 mask, and he did that.

5 He would touch himself, as people do, you
6 know. I could watch his fingers moving. He'd pat
7 his belly from time to time; and so he moved his
8 hands frequently. He adjusted himself in the seat I
9 counted at least three times, and he adjusted the
10 mask three or four times.

11 He turned his head many times during that
12 time, and he turned his head at times that were
13 appropriate to be looking at the screen. He looked
14 down. At one time I actually saw him close his eyes
15 rather hard, so it was like a squint. I saw him do
16 that.

17 He pulled himself up to the desk at one
18 point. And instead of leaning back, as he does most
19 of the time, he leaned on the table. He rubbed his
20 forehead, adjusted his glasses, and then leaned
21 back.

22 I saw Mr. Villa reach over and touch him
23 twice, and immediately he responded and turned to
24 him. He put his hands on his thighs, patted those
25 at times. Even when not moving, he would often be

1 moving his fingers; so I could see his hands.

2 I did not see counsel at any time try to
3 discuss with Mr. Perez any of the evidence or any of
4 the -- anything that was going on.

5 He rubbed the back of his head at one time
6 and touched his hair. He adjusted his glasses. He
7 adjusted the mask at times. He never put his chin
8 on his chest, indicating that he was sleeping that
9 way. He never put his head back like he had fallen
10 asleep and was waking himself up.

11 He resumed putting -- pulling himself up.
12 He would adjust in his chair. He moved his fingers
13 on his shirt and on his thighs. Even when his head
14 was still, I could see his fingers moving. And he
15 pulled his mask up several times to adjust and clean
16 his nose. I indicated he had patted his tummy when
17 he was sitting there, like that.

18 So it seems to me -- and I hope you'll
19 agree, Mr. Villa; you're at the podium -- that he
20 had a good morning and that he was awake and alert
21 and seemed to be involved. He closed his eyes.
22 That doesn't necessarily indicate to me that he's
23 asleep. So I think it may be a wrong inference from
24 that, because when y'all reach over and touch him,
25 he immediately responds. He may just close his eyes

1 at some point, but I'm not seeing that he's asleep.

2 MR. VILLA: Well, Your Honor, I agree with
3 the Court's recitation of movements. The two times
4 I reached over to touch him was because his eyes had
5 been closed long enough that it appeared to me he
6 was falling asleep. I guess there's different
7 definitions of sleep. But since we came to the
8 podium, I saw four times in between my note-taking
9 that I was concerned Mr. Perez was at least fighting
10 off sleep. And I agree that oftentimes when he
11 fought that sleep off, he would move, he would
12 adjust his chair, he would adjust his mask, he would
13 drink water, he would do things like that.

14 There was a specific point in time during
15 Mr. Rodriguez' testimony after we came to the bench
16 last time in which Ms. Fox-Young wrote a question.
17 I'm not going to read it, because I think it's
18 privileged work product. But the question was seven
19 words, a fairly simple question. Mr. Perez looked
20 at it -- that we had about something that Mr.
21 Rodriguez was testifying to. Mr. Perez looked at it
22 for what I thought was a lot longer time than would
23 normally take him to read it. I then repeated the
24 question to him verbally, and in my opinion, it took
25 him a lot longer to understand the question. He did

1 eventually answer it.

2 And so and Ms. Fox-Young and I are both
3 concerned. I recognize that there are a lot of
4 people coughing, I recognize there are a lot of
5 people getting sick. I don't think anybody is as
6 sick as Mr. Perez. I don't think anybody has the
7 underlying medical issues that Mr. Perez has. I
8 think that the fact that he was struggling to stay
9 awake during the most critical part of the testimony
10 against him in this case is telling. He was
11 completely alert and active the entire week last
12 week. There was never a moment, even though some of
13 them were dull, that I noticed him fighting sleep or
14 having any sort of trouble. I have to believe it's
15 related to the illness he's suffering.

16 I learned today that he finally got his
17 antibiotics today. He tells me he's still having a
18 lot of symptoms, a serious headache. Perhaps he's
19 closing his eyes to help with the headache. But in
20 any case, I think it is interfering with his ability
21 to assist counsel. And I don't think that the
22 standard is, under due process, whether the
23 defendant is, you know, only able to assist some of
24 the time or parts of the time. I think he has to be
25 able to assist counsel the entire time, and I don't

1 think he's able to do that.

2 And given his illness, I think that, you
3 know, we would renew our motion for a mistrial. If
4 the Court doesn't grant that, I think the
5 appropriate remedy is a continuance until Mr. Perez
6 is healthy; or severance of Mr. Perez' case until
7 he's healthy enough to stand trial.

8 THE COURT: I'm not adverse to it. You'll
9 have to talk to the marshals. But if he responds to
10 caffeine, I certainly don't mind him having a Coke
11 or, you know, a 5-hour Energy drink, or whatever he
12 has, if it's all right with the marshals. So I
13 certainly don't mind him having that in the
14 courtroom.

15 MR. VILLA: The cup you see in front of
16 him is tea with caffeine. He had some tea earlier
17 that was more for, we were hoping, for congestion,
18 and they did allow him to have some tea with
19 caffeine. I think it may have improved a little bit
20 from before when we came to the bench. But in my
21 opinion, he was still fighting sleep.

22 THE COURT: All right. We'll monitor it.
23 I'll keep an eye on Mr. Perez. We certainly want
24 him to be able to assist you when you want his
25 assistance, so we'll continue to monitor it.

1 MR. VILLA: And would the Court, for the
2 record, rule on our motions?

3 THE COURT: I deny the motion for a
4 mistrial. We'll just continue to monitor. So I'm
5 not going to sever at the present time or continue
6 the trial. I'll keep an eye on him.

7 MR. LOWRY: May I --

8 THE COURT: What does it relate to?

9 MR. LOWRY: We haven't done this yet, but
10 the marshal is taking the witness down to the
11 holding cell. And unfortunately, some of the
12 witnesses are commingling and we think possibly
13 sharing testimonial information.

14 Can we get a formal admonishment from the
15 witnesses before they leave not to discuss the case?

16 THE COURT: Fine. If I don't do it,
17 remind me.

18 Do you want to put anything on the record,
19 Deputy? Are they commingling down there?

20 MR. MICKENDROW: Deputy Mickendrow, just
21 for the record. We are keeping all the witnesses
22 separate. They are within shouting distance. But
23 we are having deputies monitor the conversations
24 that are going on. None of it is regarding the
25 trial. And all of it is mainly just general talk

1 about how are you doing, and how's things been
2 going.

3 In addition, I don't believe defense
4 counsel knows this, but the Marshal Service has been
5 providing all of the defendants at lunch time
6 caffeinated sodas in order to assist keeping them
7 awake during the trial. So the Marshal Service has
8 been doing that.

9 THE COURT: Thank you, Deputy. Appreciate
10 it.

11 All right. See y'all in about an hour.

12 (Lunch recess.)

13 THE COURT: All right. We'll go on the
14 record. Is there anything we need to discuss?

15 Do I need to know a little bit more about
16 this bad act? Maybe I ought to hear from -- I
17 thought I had Ms. Duncan before I started talking.

18 What is it about this bad act that you're
19 concerned about, Mr. Lowry?

20 MR. LOWRY: Your Honor, the bad act is a
21 1989 murder conviction.

22 THE COURT: And this is one where, at the
23 time that I got the information, neither the
24 Government nor I had enough to make a decision?
25 Isn't that my memory on this one?

1 MR. LOWRY: I think that is, Your Honor.
2 And frankly, let me put it like this: We've
3 looked -- we've gotten the complete trial
4 transcript. We spoke to the trial attorney who
5 handled that. And we've actually spoken to the
6 trial attorney, the appellate attorney. The issue
7 with the SNM gang or any gang affiliation or gang
8 membership never came up during that trial.

9 THE COURT: Let me do this: Let me have
10 Ms. Armijo make a proffer. Have you heard this?

11 MR. LOWRY: No, we haven't.

12 THE COURT: Let me have her make a
13 proffer, and then I'll let you see what you think of
14 it.

15 MS. ARMIJO: Your Honor, I disclosed on
16 February 3, on Saturday afternoon, I emailed this to
17 defense counsel.

18 THE COURT: Is this a letter or email?

19 MS. ARMIJO: This is a 302. I first
20 emailed in the afternoon the draft 302 by Nancy
21 Stemo and then that evening --

22 THE COURT: This is Agent Stemo talking to
23 Mr. Rodriguez?

24 MS. ARMIJO: She was noting down anything
25 new. It was during trial prep, when we were going

1 over everything; anything that we felt had not been
2 previously gotten into more detail. She authored a
3 three-page 302 for us to send to the defense. When
4 she sent me a couple hours later a draft, I e-mailed
5 the draft out that afternoon, and Saturday evening,
6 I want to say after 10:00 p.m. I emailed to defense
7 counsel the finalized version, along with other 302s
8 from that day.

9 THE COURT: So what's Mr. Rodriguez going
10 to say that ties this '89 murder with the SNM?

11 MS. ARMIJO: Mr. Rodriguez would say that
12 Mr. Baca told him about it; that it was in reference
13 to -- I'm looking at the wrong sheet. I'm sorry.

14 THE COURT: You don't have an extra copy
15 of this 302, do you?

16 MS. ARMIJO: No. I can get you a copy.

17 THE COURT: Go ahead and read me what you
18 have.

19 MS. ARMIJO: I believe Special Agent Acee
20 may have one. He says that when he was housed with
21 Mr. Baca, Baca shows Mr. Rodriguez a plan for the
22 SNM. That's what we've already talked about. Let's
23 see, "Baca told Rodriguez about the murder of Luis
24 Velasquez. Baca killed Velasquez in front of the
25 PNM Main warden, and told the warden he was not

1 going anywhere till Velasquez was dead. Rodriguez
2 heard different versions of the story and believed
3 that the story Baca told him was different as to how
4 it actually occurred. Baca and Rodriguez became
5 close to each other, though, in this time frame."

6 So in essence, Mr. Baca was bragging to
7 Mr. Rodriguez about the murder, and the important
8 part about it --

9 MR. LOWRY: Your Honor.

10 THE COURT: Why don't you keep him out for
11 just a second. Okay?

12 Let me do this: Why don't you go ahead
13 and bring him in. Y'all go ahead and bring him in.

14 Why don't I read this. I'll read it, and
15 then I'll give you a chance to come up before we get
16 into it, to approach before we get --

17 MR. LOWRY: Your Honor, I will say this.
18 Everything on that piece of paper is everything I
19 know.

20 THE COURT: Okay.

21 MR. LOWRY: There is nothing on that piece
22 of paper that related to the SNM.

23 THE COURT: Okay. Where exactly are you
24 reading, Ms. Armijo?

25 MS. ARMIJO: The second paragraph.

1 THE COURT: Is that everything that you
2 know is in that second paragraph, as well?

3 MS. ARMIJO: Well, no. I know that what
4 he would say --

5 THE COURT: Well, don't --

6 MS. ARMIJO: -- the importance of what is
7 said.

8 THE COURT: Okay.

9 MR. BECK: Right. And we will have
10 testimony from another cooperator about this
11 incident and how it is related to the SNM and
12 increased Mr. Baca's --

13 MR. LOWRY: Your Honor, can we not have
14 this conversation with the witness in the room?

15 THE COURT: All right. Let's hold off on
16 it.

17 MS. ARMIJO: One more thing -- I'm not
18 going to get into contents, but this is discussed in
19 a phone conversation --

20 MR. LOWRY: Can we not have the
21 conversation with the witness here?

22 THE COURT: Let's not. All right. Is
23 there anything else we can talk about, other than
24 this issue?

25 MS. ARMIJO: No, Your Honor. I think that

1 before the next break, we'll ask to approach because
2 we will be bringing it up.

3 THE COURT: All right. How about from the
4 defendants? Anything we need to discuss?

5 MR. LOWRY: No.

6 THE COURT: All rise.

7 (The jury entered the courtroom.)

8 THE COURT: All right. Everyone be
9 seated.

10 Mr. Rodriguez. I'll remind you you're
11 still under oath.

12 THE WITNESS: Yes, sir.

13 THE COURT: Ms. Armijo, if you wish to
14 continue your direct examination of Mr. Rodriguez,
15 you may do so at this time.

16 MS. ARMIJO: Thank you, Your Honor.

17 THE COURT: Ms. Armijo.

18 BY MS. ARMIJO:

19 Q. Now, I believe when we left off, we were
20 talking about when you were -- after the homicide
21 when you were in your cell, whatever became of the
22 shank that Timothy Martinez gave you that he
23 indicated was Javier Molina's?

24 A. I took the handle off it, and then I put
25 it up on the desk, right in the middle; I bent it

1 into -- where both the back end and the front were
2 touching. And I went to put Saran Wrap around it,
3 and I couldn't get the Saran Wrap. And I ended up
4 keistering it and taking it with me to the PNM Level
5 6. And the Saran Wrap that is in the toilet is the
6 Saran Wrap that I attempted to wrap it with.

7 Q. So there is some Saran Wrap that is
8 actually in a picture?

9 A. Yes.

10 Q. That was your cell?

11 A. Yes, ma'am.

12 Q. Now, when did you go back up to PNM?

13 A. The next day, emergency transport.

14 Q. Now, prior to going up to PNM in that
15 evening, was there investigations going on with
16 Corrections, maybe STIU interviews, or with the New
17 Mexico State Police?

18 A. Yes, there was.

19 Q. And were you actually -- did they attempt
20 to interview you?

21 A. I think they did come interview me, the
22 State Police did. I was one of the first
23 individuals taken out of the pod and put into the
24 segregation. And then they moved me to -- I'm not
25 familiar with the grounds there, but it was either

1 2-A or 2-B. And I lived with Rudy Perez, Jeffrey
2 Madrid, Jerry Montoya, and I think Michael
3 Hernandez. And I lived right above Rudy Perez.

4 Q. Okay. And when was this?

5 A. This was that night, the night of the
6 incident.

7 Q. Okay. So we're talking, like, March 7,
8 maybe into the --

9 A. Maybe into the morning.

10 Q. Into the morning hours of March 8?

11 A. Yes.

12 Q. And were they taking you all out, one at a
13 time, to interview?

14 A. Yes. I had called Rudy in the vent,
15 complaining that it was cold. And he had started
16 laughing, that he brought his jacket, his sweats,
17 his radio, and that it wasn't his first rodeo. And
18 I laughed at him. I told him, "Well, you know
19 they're going to take all that shit from you."

20 Q. Now, I'm going to hold you up. You said
21 you called him through the vents?

22 A. Right.

23 Q. Explain to the jury what that means.

24 A. Okay. Each cell has an air duct. It's a
25 vent that is -- there's two cells on the top, two

1 cells on the bottom. And in those cells there's air
2 vents next to the toilet, and you could see right
3 across into the next cell, and you can speak to the
4 individuals at the bottom tier. And each four cells
5 could hear you when you talk. So you just call out
6 the name and they'll answer, and you begin having a
7 conversation.

8 Q. All right. I'm going to put up Exhibit
9 Number --

10 MS. JACKS: Your Honor, if that's the end
11 of that testimony, we'd ask that it be limited.

12 MS. ARMIJO: I'm going to continue on.
13 But we can certainly start.

14 MS. JACKS: Okay.

15 BY MS. ARMIJO:

16 Q. All right. Now, I'm looking at Exhibit
17 Number 751 and I'm just using this as an example.
18 There's cells 107 and 108?

19 A. Right.

20 Q. And if I were to put up on top of that --

21 A. That would be the bottom tier right there.
22 That would be the top tier.

23 Q. Okay. I'm putting up 752, and I'm
24 pointing to rooms 115 and 116.

25 A. Right.

1 Q. And then if we were to put that on top,
2 Exhibit Number 751, we would have cells 107 and 108?

3 A. Yes, those four cells could speak to each
4 other through the vent.

5 Q. Okay. And so, now, you weren't in this
6 unit; correct?

7 A. No.

8 Q. So you said -- who did you have a
9 conversation with?

10 A. With Rudy Perez.

11 Q. And you said you were -- something about a
12 rodeo. Can you explain that?

13 A. When I was complaining it was cold,
14 because I was in a paper suit, and he had told me
15 that he had brought his sweats, his jacket, his
16 radio, his beanie, and stuff like that. I told him,
17 "You know they're going to take that shit from you."

18 He said, "No, they're not going to take it
19 from me."

20 I said, "They're going to take it from
21 you."

22 And when they pulled him out for
23 interview, I seen -- that's the first time I seen
24 the walker with the streamers on it. I just shook
25 my head, because I seen him walk out of his cell,

1 knowing the bar was missing with the streamers
2 hanging on the side. I figured STIU was going to
3 see it.

4 Q. I guess that was my question. Why were
5 you concerned?

6 A. Because the bar was missing, and I took
7 the bar from the walker.

8 Q. When you took the bar from the walker, did
9 you put, as you call them, the streamers on there?

10 A. No, I did not.

11 Q. Okay. And were you afraid that the papers
12 would call attention to it?

13 A. The STIU -- yeah, that the pieces of sheet
14 would call attention to it.

15 Q. And is that -- was it pieces of sheet? Is
16 that what you're referring to as streamers?

17 A. I don't know what it is. It looks like
18 pieces of sheet from the picture.

19 Q. Okay. But it's something white?

20 A. Yes.

21 Q. All right. And did you have a
22 conversation with Mr. Perez when he returned?

23 A. When he returned, I had a conversation
24 with him because he came back in a paper suit. And
25 I was laughing at him. And he goes, "Is everything

1 all good?"

2 I said, "Yeah. Why?"

3 He goes, "Well, I mean, is everything all
4 good with those things?"

5 I said, "Yeah, it's all good. Don't worry
6 about it."

7 He goes, "Well, Dan" --

8 I said, "Don't worry about it."

9 I didn't know who was in the conjoining
10 cells next to him, and I -- so I didn't want him to
11 say nothing. I told him, "Just don't worry about
12 it. Everything is all good."

13 He goes, "Okay. I just want to make
14 sure."

15 I told him, "Don't worry about it. It's
16 all good."

17 He was concerned that -- I can't say what
18 he was concerned with. I can just assume what he
19 was concerned with.

20 Q. Okay. So he was trying to talk to you --

21 A. About the weapons.

22 Q. And then you didn't want him to say
23 anything else?

24 A. No.

25 Q. Were you aware of who else would have been

1 next to you in the vents that could have heard?

2 A. We didn't know who was in that unit.

3 Q. But you did know that Mr. Perez was -- was
4 he next to you or below you?

5 A. He was right below me.

6 Q. So could you see him?

7 A. No, I can't see him. I can only see
8 across from -- I was on the top tier, he was on the
9 bottom tier.

10 Q. Okay. And how did you know he left with
11 the walker?

12 A. I seen him. I just came to my door and I
13 seen him coming out.

14 Q. Okay. So when they came to go get him,
15 you could look out your window --

16 A. There is a window.

17 Q. -- and see him?

18 A. I believe there is pictures of the cells
19 where you could see the windows in the discovery.

20 Q. Okay. Now, before we move on, I want to
21 ask you just a couple of things. Did you hear --
22 when you returned the paperwork to Carlos Herrera,
23 was that -- just so that we're clear -- before or
24 after the murder?

25 A. Before.

1 Q. And was there any --

2 MS. JACKS: Your Honor, I'm sorry, can we
3 have the limiting instruction regarding the
4 statements of Rudy Perez that counsel just elicited?

5 THE COURT: All right. These statements
6 that Ms. Armijo is getting that Mr. Rodriguez is
7 testifying Mr. Perez said -- these can only be used
8 against Mr. Perez. They cannot be used against any
9 other person.

10 All right, Ms. Armijo.

11 BY MS. ARMIJO:

12 Q. All right. Now, when you returned the
13 paperwork, was there anybody with you?

14 A. I recall -- I think I recall Dan coming to
15 the door with me. And I'm thinking that when I slid
16 it under -- I think a few of us had contact visits
17 coming up. And he said something about Wednesday.
18 And Carlitos, Lazy, Carlos Herrera said, "Just get
19 it done."

20 Q. And what did you take him to mean by,
21 "Just get it done"?

22 A. I think he thought we were trying to wait,
23 because there was drugs supposed to be hit on
24 Wednesday. I thought that he was thinking that we
25 were going to wait till Wednesday, and then hit

1 Molina. I told him, "We'll talk about it. Just
2 stay on your side. We'll handle it over here."

3 Q. Okay. And so what did you take, "Just get
4 it done" to mean?

5 A. We were all concerned that if it didn't
6 get done, with the paperwork going around, that he
7 was going to get kited out; someone was going to
8 drop a kite and inform, and then the hit wouldn't
9 have been able to take place.

10 Q. What do you mean by "kited out"?

11 A. When the wrong people come across
12 information, they'll go give it to STIU, or give it
13 to a CO, that someone's life is in danger, and
14 they'll move that individual.

15 Q. Now, why did you choose to give the
16 paperwork back to Herrera?

17 A. Well, I just figured to give it back to
18 Lupe Urquizo, because his paperwork was in there.
19 If I was to get caught with his paperwork, that's
20 instant report. If you have anyone else's legal
21 work, you get a misconduct report for that. And it
22 was his, so I gave it back to him.

23 Q. Do you know -- are you aware of whether or
24 not Carlos Herrera -- what his position within the
25 pod was, yellow pod?

1 A. In his pod?

2 Q. Yes.

3 A. Along with Alex Munoz, him and Alex Munoz
4 had the keys for that pod. They were the
5 key-holders.

6 Q. In your experience with SNM, who is it
7 that does the actual stabbings as far as within the
8 structure of SNM?

9 A. Sometimes -- it depends on the
10 individuals. But more than likely, it's the
11 soldiers. You've got a few leaders that are willing
12 to take it on and lead by example. That's very few.
13 Most of them are trying to use you so they don't get
14 locked up as long as you will.

15 Q. Now, you indicated that you were sent back
16 to the North; is that right?

17 A. PNM North, Level 6.

18 Q. Who were you sent back with?

19 A. I was on transport with Mauricio Varela,
20 and there was a trailing transport with Daniel
21 Sanchez in it.

22 Q. And that was on what day; do you recall?

23 A. The next day.

24 Q. So would that be the 8th, on Saturday?

25 A. It would be on the 8th.

1 Q. And where were you housed?

2 A. I was housed in 3-A R pod.

3 Q. Which unit? The North?

4 A. North facility.

5 Q. So that would be Level 6?

6 A. Yes.

7 Q. At some point were you charged in the
8 state case?

9 A. I was.

10 Q. What were you charged with?

11 A. With tampering with evidence, conspiracy
12 to tamper with evidence, and possession of a weapon.

13 Q. Okay. And which weapon was that?

14 A. The weapon from the shower drain.

15 Q. While we're speaking of weapons, did you
16 have actually a shank on you somewhere on March 7?

17 A. Yes, I had one prior to the Molina one.
18 And prior to the ones I made, I had an icepick.

19 Q. And where was that?

20 A. It was in the sole of my shoe, shoved in
21 the foam. Not underneath the sole, but in the back.

22 Q. I'm going to show you on the Elmo what's
23 in evidence as Government's Exhibit 746. Can you
24 see that?

25 A. Right, yes.

1 Q. Does that appear to be your shoe?

2 A. Doesn't look like it was before, but yeah,
3 that's it.

4 Q. All right. And where did you have it?

5 A. In the back there is like a gray tab. You
6 see the back of the sole? The complete back of the
7 heel. It looks like they chopped the heel off, but,
8 right.

9 Q. All right.

10 A. Yeah. Lift it up. See the gray tab right
11 there, where the holes are?

12 Q. Right here?

13 A. Those holes are from putting the weapon in
14 there.

15 Q. All right. So --

16 A. You push down on it, it's like a soft
17 foam, and it goes down through the heel.

18 Q. All right. Did you ever take it out on
19 the 7th?

20 A. No.

21 Q. Where did you stay when you were pending
22 your state case?

23 A. They took me and isolated me from all SNM
24 members to the South facility.

25 Q. Okay. And how long were you there?

1 A. I think I was isolated for around nine
2 months, nine and a half months.

3 Q. Where did you go from there?

4 A. I was going back and forth to court.
5 Eventually, they moved me to the PNM North facility,
6 X pod. And then they moved me -- we had all the SNM
7 in 3-A. I was in 3-B. And then about a month
8 later, they moved me back with all the SNM members.

9 Q. And were you up there up until your arrest
10 in this case?

11 A. Yes, I was.

12 Q. And were your state charges dismissed?

13 A. They were.

14 Q. And do you know why that is?

15 A. Because the feds picked them up.

16 Q. Now, when you were up there, did you -- up
17 at PNM, were you ever housed at some point with
18 Anthony Baca again?

19 A. Yes. When they brought him back from
20 Colorado, he was housed in the cell right below me,
21 in Q pod.

22 Q. Okay. Again, like that configuration that
23 we saw before with Mr. Perez?

24 A. It's a little different in the North.
25 There's six cells on top of six cells, and it's one

1 front view. So -- but the same thing. You can talk
2 to each other through the vents, only the vents are
3 a little higher on the wall.

4 Q. You can still hear each other?

5 A. Still hear each other. You just can't see
6 each other like you can in Southern.

7 Q. And would you also do any rec time with
8 Mr. Baca?

9 A. Yes.

10 Q. Did you continue to have conversations
11 with him?

12 A. I did.

13 Q. Now, in reference to -- did you have a
14 conversation with Mr. Baca about your pending
15 charges?

16 A. I did.

17 Q. And when was it that you had a
18 conversation? Let me back up. Was he there the
19 entire time you were at North, or was there a point
20 in time when he was moved back?

21 A. There was a point in time when he was
22 moved back. I think it was around October, before
23 right there. Let me see. Early October, right
24 before you guys picked us up on the federal case.

25 Q. And the federal case -- if you were picked

1 up on December 3 of 2015, so this would be October
2 of 2015?

3 A. Had to be early October.

4 MR. LOWRY: Your Honor, can we approach
5 the bench?

6 THE COURT: You may.

7 (The following proceedings were held at
8 the bench.)

9 MR. LOWRY: Your Honor, I believe she's
10 going to solicit testimony about the threats that
11 were made on Mr. Armenta's family during the
12 pendency of the state case. I want to just argue
13 that this is vastly more prejudicial than probative
14 of anything. They have more than enough
15 racketeering -- alleged racketeering activity, and
16 that this is exceedingly prejudicial, especially for
17 a jury who has been told that they need to be
18 anonymous, and now they're not.

19 I'm just worried about the impact of this
20 type of evidence on this jury. We've already seen
21 them crying in the courtroom when they got selected.
22 They expressed during voir dire that they were
23 scared that their names were shared. I think it's
24 over the top in the context of this case, given the
25 evidence that they already have.

1 MS. ARMIJO: That is a bad act that was
2 noticed and approved by the Court.

3 THE COURT: Yeah, I think I've already
4 made the decision.

5 You know, as far as crying, I didn't see
6 anybody cry. I did see, you know, jurors looking
7 kind of sad. But that may be because they were
8 selected for an eight-week trial. I think this is a
9 good bunch. I think we weeded out people that we
10 thought were afraid to sit on this jury. This bunch
11 really impresses me. They just clock in, clock out.
12 I've had juries of 12 that aren't as good as this
13 group. This is an outstanding bunch of Americans.
14 I think we made this call. And I'll stick with it.
15 Overruled.

16 MS. DUNCAN: We have a standing objection
17 to this line of questioning by Mr. Armenta.

18 MS. BHALLA: Your Honor, in regards to --
19 I just wanted to -- for Mr. Herrera, we also would
20 object to this line of questioning in terms of bad
21 acts. I think that a limiting instruction in this
22 case isn't enough to keep this from being
23 prejudicial to Mr. Herrera. So we object to it, as
24 well. If the Court is not inclined to grant the
25 objection, then I would ask that a limiting

1 instruction be given.

2 THE COURT: Okay, well --

3 MR. VILLA: On behalf of Mr. Perez, I join
4 in Ms. Bhalla's objection.

5 MS. JACKS: And we join on behalf of Mr.
6 Sanchez. And I don't think a limiting instruction
7 is sufficient to cure the damage caused.

8 THE COURT: I understand the objections.
9 I'll allow the testimony.

10 (The following proceedings were held in
11 open court.)

12 THE COURT: All right, Ms. Armijo.

13 BY MS. ARMIJO:

14 Q. Mr. Rodriguez, did you have a conversation
15 with Mr. Baca about your pending case?

16 A. Yes.

17 Q. And just so we're clear, the pending case
18 was in reference to which incident?

19 A. The Javier Molina murder.

20 Q. What was your conversation with Mr. Baca
21 about?

22 A. It was about that I suspected Jerry
23 Montoya and Armenta -- well, I knew Armenta was
24 ratting, but Jerry Armenta was working with the
25 STIU. And went on to that my lawyer was going to

1 get my charges amended. They were about to amend me
2 for first-degree murder. So we were talking about
3 that.

4 And then he brought up, if you don't want
5 to just go on and do it, so he wanted to ask me if
6 it was okay if he had someone holler at Armenta's
7 family. And I told him, "I don't care. You know,
8 I've got the information right there, if you want
9 it." And I ended up giving him that.

10 Q. Okay. Now, when you stay "holler at
11 Armenta's family," what did you take that to mean?

12 A. Threaten his family. If he testified,
13 something was going to happen to his family.

14 Q. Okay. And how did you have that
15 information?

16 A. In the state case, there is no such thing
17 as redacted. I had the state discovery, which had
18 everyone's escape fliers, has all their personal
19 information, their mercy contacts, their charges,
20 everything that's on there; their mother and
21 father's addresses, everything.

22 Q. And so what did you do with that
23 information?

24 A. I wrote it down on a piece of paper and I
25 fished it down to the bottom tier from the top tier

1 to him.

2 Q. And did he tell you anything in reference
3 to that?

4 A. To fishing it to him later?

5 Q. Yes. I mean, after you gave it to him --

6 A. I didn't ask him another thing about it.
7 I just -- he wanted to know if he could get
8 involved. I said, "Yeah."

9 Q. Okay. Did you talk to him about your
10 state charges? Did he tell you anything in
11 reference to them?

12 A. He was disappointed that myself, Timothy
13 Martinez, and Jerry Montoya were charged, because
14 Javier Molina was supposed to be murdered far before
15 I got down there. So he was disappointed that good
16 brothers like us got caught up in something that
17 should have been done before we got down there.

18 MS. JACKS: Your Honor, may we request a
19 limiting instruction, please?

20 THE COURT: Yes. These comments that Mr.
21 Rodriguez is testifying about that Mr. Baca made to
22 him cannot be used against any of the other
23 defendants. So you can only consider those as to
24 Mr. Baca.

25 Ms. Armijo.

1 BY MS. ARMIJO:

2 Q. Now, did you have a conversation with Mr.
3 Baca in reference to anything regarding Gregg
4 Marcantel or Dwayne Santistevan?

5 A. In the same yard we conversated about
6 that; that they were having a banquet or a barbecue,
7 and he was going to have someone follow him home.
8 And I told him, "I don't want no part of that."

9 I already told the carnals before he got
10 back that I don't want no part of the Santistevan
11 and Marcantel case, the hits on them.

12 Q. Okay. So when he started talking to you
13 about it, what did you say?

14 A. "I don't want nothing to do with that." I
15 just told him, "I already told the carnals that were
16 involved in that shit, I don't want nothing to do
17 with it."

18 MS. JACKS: Again, Your Honor, we'd
19 request a limiting instruction.

20 THE COURT: Same instruction. You can
21 only consider this evidence about what Mr. Baca said
22 to Mr. Rodriguez only in connection with Mr. Baca's
23 charges, not as to the other three defendants'
24 charges.

25

1 BY MS. ARMIJO:

2 Q. And who specifically, if you can recall,
3 was it that he was talking about having followed?

4 Who --

5 A. I didn't ask. And I hope -- I didn't want
6 to hear it. I shut it down right away because I
7 don't want nothing to -- I knew someone was going to
8 end up telling on that case. And the more people he
9 talked to about it, the more he became suspect as
10 telling. And I always try to keep my name out of
11 the suspect circle.

12 Q. Now, in reference to the conversation that
13 you had with him about Jerry Armenta, did you leave
14 that -- were you worried? Was there anything that
15 he told you as far as what he would do?

16 A. There was nothing that he told me he would
17 do. He was going to have someone reach out to them.

18 And then we also spoke about the case,
19 about him being -- he was insisting on letting me
20 know that he knew about the paperwork; that he kept
21 on telling me: "I know Spider had the paperwork.
22 Cheech told me."

23 I told him, "I don't know." I didn't
24 want -- there was only a few of us that knew Spider
25 had that paperwork. So I wasn't --

1 Q. Who is Spider?

2 A. David Calbert. When he was insisting,
3 "No, no. Cheech told me. I talked to him."

4 Q. Who is Cheech?

5 A. Joe Martinez.

6 Q. And when you say, "He's telling me, no,
7 Cheech told me --"

8 A. Yeah.

9 Q. What are you referring to?

10 A. He's referring to that he spoke to Cheech.
11 He didn't tell me at the time. It was on the phone.
12 He told me he spoke to Cheech.

13 Q. Okay.

14 A. He goes, "He told me that he gave the
15 paperwork to him."

16 I told him, "I don't know."

17 I didn't want Spider's name out there.
18 There is only maybe three of us that knew Spider had
19 that paperwork.

20 Q. And so were you worried about that?

21 A. I was worried he was being insistent like
22 that, because he's like -- either he's trying to
23 prove that he knows something about it and wants to
24 be involved, or --

25 Q. I don't want you to speculate.

1 A. Okay.

2 Q. So when was that conversation?

3 A. The same yard, with the Marcantel, and the
4 disappointment that me and Timothy Martinez and
5 Jerry Montoya -- it was the same conversation.

6 I believe the Discovery Channel Rookie
7 Year -- they attempted to film us that day, and we
8 both refused to let them film us.

9 Q. Okay. So it was on the day that Rookie
10 Year was there?

11 A. They filmed up there at the North.

12 Q. But you didn't agree to be filmed?

13 A. No.

14 MS. JACKS: Your Honor, may we have the
15 limiting instruction as to that testimony?

16 A. I didn't know --

17 THE COURT: You mean not as to the film,
18 but as to Mr. Baca's comments?

19 MS. JACKS: As to the alleged statements
20 of Mr. Baca.

21 THE COURT: Yeah, these statements that
22 are being elicited as Mr. Baca's cannot be used
23 against any other defendant. They can only be used
24 in your consideration of the charges against Mr.
25 Baca.

1 MS. ARMIJO: And Your Honor, may we
2 approach?

3 THE COURT: You may.

4 (The following proceedings were held at
5 the bench.)

6 MS. ARMIJO: I'm at the point now where I
7 was going to ask him about --

8 THE COURT: This right here. It's still
9 just not enough information here for me to say that
10 this is gang-related. If all he's going to say is
11 what's in this paragraph, it's just not enough to
12 link it with this. And --

13 MS. ARMIJO: This is why it's important
14 what he said in that paragraph. He talks
15 specifically about the warden and how it links to
16 SNM.

17 THE COURT: What?

18 MS. ARMIJO: How it links to SNM is that
19 he specifically was bragging he was doing this crime
20 in front of the warden. And in doing so, he is
21 raising his level in the SNM, and bragging about how
22 he had no regard for correctional officers. And
23 that's basically what he would say.

24 Now, we will be able to tie it in later
25 with both a recording, where he describes this call

1 with Eric Duran -- I mean, where he describes this
2 murder and brags about it with Eric Duran. And also
3 I believe that Gerald Archuleta, Styx, who is going
4 to be testifying, will be able to testify as to how
5 this is gang-related, that this was a gang hit.

6 Am I correct, Mr. Beck?

7 MR. BECK: Mr. Archuleta will testify that
8 the victim of the murder, the day before, had
9 stabbed an SNM member. And so this murder was in
10 retribution for an SNM stabbing. That's what
11 elevated Mr. Baca to the position of leader and was
12 admitted to the gang.

13 So this fits under the last element that
14 the United States must prove for VICAR, which is
15 that it was done either for the receipt of something
16 of value from the gang or to gain entrance, to
17 maintain, or increase position.

18 THE COURT: So this was Baca's entrance?
19 This was his entry into the gang?

20 MR. BECK: Right.

21 THE COURT: And you can make a
22 representation to the Court that Archuleta will
23 testify just as you outlined?

24 MR. BECK: No.

25 THE COURT: Because if I don't have

1 that --

2 MR. BECK: Right.

3 THE COURT: -- I've got a hiccup here.

4 MR. BECK: I think what's probably more
5 prudent -- I know this won't work out well for us --
6 I think it's probably more prudent to wait on
7 getting this statement from Mario Rodriguez until
8 after Mr. Archuleta testifies.

9 THE COURT: It would certainly be safer.

10 MR. BECK: I think so.

11 THE COURT: I'd be inclined to think, if
12 you've got that testimony from Archuleta, that would
13 it be appropriate, then, to have Rodriguez then
14 confirm that he was told about the murder, as well.

15 MR. BECK: I think so, too. I don't think
16 that will make Mr. Rodriguez pleased that he has to
17 stay down here, but I think it would be a better
18 record if we get that testimony in first, and then
19 bring him back on, if we do get that testimony. I
20 expect we will, but I can't say for sure.

21 THE COURT: Well, without an assurance
22 that it's coming in, I'm not going to let
23 Mr. Rodriguez, just on the basis of what was
24 provided in the letter, which I did review again,
25 and in this 302, the second paragraph -- I don't

1 think there is enough to go forward with Rodriguez.

2 MR. LOWRY: I appreciate that, Your Honor.
3 But we've been complaining about discovery
4 throughout the duration of this trial. And it's a
5 little disappointing to have, you know, this coming
6 out during the process. Is there any information we
7 can get from the Government to enlighten us about
8 this?

9 THE COURT: Do you have anything on
10 Archuleta?

11 MR. BECK: I can provide -- so, I mean, I
12 received that from his attorney. I can forward that
13 email to the defense.

14 Just for the record, I received that email
15 at 12:36 p.m. today.

16 THE COURT: During the lunch hour.

17 MR. BECK: About two hours ago.

18 MR. LOWRY: Do you understand why --

19 THE COURT: I think we're being prudent
20 not putting it in through Mr. Rodriguez. All we've
21 got to rely on is Mr. Rodriguez -- Mr. Archuleta's
22 attorney, and that's -- probably the Government's
23 wise not to be relying on that.

24 MR. CASTELLANO: There is another piece of
25 evidence related to this, which was disclosed long

1 ago. Mr. Baca makes an admission to Eric Duran
2 that's recorded. He also discusses the murders with
3 Eric Duran, another SNM Gang member. So this issue
4 has always been kind of floating out there.

5 MR. LOWRY: I don't want to belabor this,
6 but I just want to point out that, as with this
7 morning, they said the confidential informant
8 statements aren't reliable because everybody puffs.
9 And it's very situational where statements are
10 suddenly reliable and not puffing and vice versa.
11 And the fact that he was in Level 6 talking about
12 this, and puffing when he was put in Level 6 because
13 of threats made on his life, shouldn't be
14 surprising.

15 MS. DUNCAN: Your Honor, if I could just
16 add, it's true that he talks about this with Eric
17 Duran. But he doesn't say it's an SNM hit. There
18 is no dispute that Mr. Baca was convicted of this
19 murder in 1989. So I think that's in dispute
20 whether it's gang-related.

21 THE COURT: If they bring in Archuleta, I
22 do think that's probably enough to tie it to the
23 SNM.

24 MS. DUNCAN: The only thing we'd ask,
25 before they get the testimony from Mr. Archuleta,

1 they provide a basis for that knowledge. I think
2 this is more hearsay.

3 THE COURT: Okay.

4 MS. DUNCAN: Thank you.

5 (The following proceedings were held in
6 open court.)

7 THE COURT: All right. Ms. Armijo.

8 BY MS. ARMIJO:

9 Q. Now, Mr. Rodriguez, you were charged in
10 this case -- I believe you said you were arrested in
11 December of 2015?

12 A. December 3. With the feds?

13 Q. Yes.

14 A. Yes, ma'am.

15 Q. And how many cases were you actually
16 charged in?

17 A. Two.

18 Q. And involving which incidents?

19 A. The Alex Sosoya incident from 2011, and
20 the Molina from 2014.

21 Q. Okay. And so who, if you recall, were you
22 charged with along -- in the Sosoya incident?

23 A. With Robert Martinez, Baby Rob.

24 Q. And are you aware of whether or not he's
25 cooperating with the United States?

1 A. He is.

2 Q. Was that case set to go to trial?

3 A. It was.

4 Q. And when was that going to go to trial?

5 A. I think the week after October -- what is
6 it? October 24?

7 Q. Of which year?

8 A. Of this year -- or last year. What year
9 are we in? 2018?

10 Q. Yes.

11 A. 2017.

12 Q. And were you preparing to go to trial?

13 A. I was.

14 Q. Were you the only one that was left in
15 that case that was going to go to trial?

16 A. Unfortunately, yes.

17 Q. And at some point prior to that trial, did
18 you make a decision about whether to go forward with
19 that trial?

20 A. I did.

21 Q. Okay. Tell us about that.

22 A. The day of October 24?

23 Q. Well, yes, about your decision not to go
24 forward with the trial.

25 A. I showed up to court. I was ready to go

1 to trial. I knew that I was being used as, like, a
2 test run with other lawyers. I knew that they
3 wanted to see the outcome of my case.

4 MR. VILLA: Objection, Your Honor. Can we
5 approach?

6 THE COURT: You may.

7 (The following proceedings were held at
8 the bench.)

9 MR. VILLA: Your Honor, I think that --

10 THE COURT: Let me suggest this. What is
11 it that you want him to say?

12 MS. ARMIJO: He's going to get in that
13 basically he was prepared to go to trial and he came
14 to the decision to cooperate.

15 THE COURT: That's all you want out of
16 him?

17 MS. ARMIJO: Yes.

18 THE COURT: Because it sounds like he's
19 about to talk about his mother-in-law and everything
20 else. Can you just lead him through that?

21 MS. ARMIJO: Sure.

22 THE COURT: Is that okay with you?

23 MR. VILLA: I have a couple of problems,
24 Judge. I'm okay with that, but I think the cat's
25 out of the bag. He says he was being used by other

1 lawyers as a test run.

2 THE COURT: I don't know what to do about
3 that.

4 MR. VILLA: I think, one, a mistrial is
5 appropriate.

6 Two, I think that comes from information
7 learned through the privilege, the joint defense
8 privilege. And I think it's completely
9 inappropriate testimony. And the Government is well
10 aware of that.

11 THE COURT: Let me do this: If there is
12 no problem, tell the jury to strike his answer.
13 Start over and then lead him through this as to why
14 he decided to plea.

15 MR. BECK: Your Honor, I think his
16 testimony is responsive. I think if it's his
17 privilege under the defense agreement, it's his
18 privilege.

19 THE COURT: I don't want to get into that
20 right now. That might take a lot of research to
21 decide whether a defendant here can just waive a
22 joint privilege on his own. And I don't think it's
23 necessary. Doesn't sound like it's anything you
24 really need. So let's do it that way. I'll tell
25 them to strike the answer and not to consider it,

1 and start over as to --

2 MS. BHALLA: Just for the record,
3 Defendant Herrera joins in the motion for the
4 mistrial.

5 THE COURT: All the defendants.

6 MR. LOWRY: Your Honor, I'd like to add
7 one point to this. I don't want to belabor it, but
8 this testimony dovetails uniquely with the
9 Government's theory that individuals like Mr.
10 Rodriguez were used, in his words, as torpedoes for
11 the benefit of the enterprise. And that's why they
12 wanted to solicit precisely that to show that he's
13 being used as a tool for the benefit of others. And
14 I just think it's highly prejudicial, and I move for
15 a mistrial.

16 THE COURT: Okay.

17 MS. JACKS: Mr. Sanchez joins in the
18 objection and motion for mistrial.

19 THE COURT: Okay.

20 (The following proceedings were held in
21 open court.)

22 THE COURT: Ladies and gentlemen,
23 Mr. Rodriguez was telling you a few things about why
24 he decided to plea. Ignore those. Strike them from
25 the record. We're going to start over.

1 Ms. Armijo, you can ask your questions
2 again, and then we'll get the reasons for his plea.

3 BY MS. ARMIJO:

4 Q. All right. Mr. Rodriguez, you indicated
5 that you were going to go ahead and go to trial; is
6 that correct?

7 A. Yes, ma'am.

8 Q. And at some point when you were getting
9 ready to go to trial, I think you said that you were
10 going to trial alone?

11 A. Right.

12 Q. And there was a court proceeding that I
13 believe you said you thought it was October 24; is
14 that correct?

15 A. I think it was, yes.

16 Q. And when you came to that court
17 proceeding, were you the only person left in that
18 case of yours regarding Mr. Sosoya?

19 A. Yes, I was. I was the only one left on
20 that indictment.

21 Q. And as far as -- when you came to court,
22 you were still prepared to go to trial; correct?

23 A. Yes, ma'am.

24 Q. All right. Now after that court
25 proceeding -- because I assume -- do you recall it

1 was a pretrial hearing?

2 A. A pretrial hearing.

3 Q. After that proceeding, did you actually
4 have an opportunity to sit down with the United
5 States?

6 A. I did.

7 Q. Okay. And when you walked into that room
8 with the United States, did you have any intention
9 of cooperating?

10 A. No.

11 Q. When you sat down, would it be fair to say
12 with that meeting, without -- that the United States
13 spoke to you about cooperating, but at that point in
14 time you just weren't interested?

15 A. I wasn't interested.

16 MR. VILLA: Objection, leading.

17 THE COURT: Overruled.

18 A. I wasn't interested in cooperating.

19 BY MS. ARMIJO:

20 Q. Now, after that meeting, did you have an
21 opportunity to think about it?

22 A. I think I spoke to my lawyer. You guys
23 left. I spoke to my lawyer, and I just said, "I'm
24 done." And he contacted someone else's lawyer and
25 told them.

1 Q. I don't want to get into what your
2 attorney did or anything else.

3 A. Okay.

4 Q. But at some point you said you spoke to
5 him and you said, "He's done"?

6 A. That's what I said. "I'm done."

7 Q. You're done, so --

8 A. "I'm done."

9 Q. Okay. What did you mean when you said,
10 "I'm done"?

11 A. I don't want to be an SNM member no more.
12 I don't want to be a gang member no more. I was
13 tired of it.

14 Q. How old are you?

15 A. I'm 33.

16 Q. And I believe we heard from your testimony
17 earlier today that you've been incarcerated since
18 you were 18?

19 A. I was 18.

20 Q. You made that decision with your attorney?

21 A. I did.

22 Q. After meeting with your attorney, did you
23 then meet with the United States?

24 A. I did.

25 Q. And when you made that decision, when you

1 came to court that day, did you have any intentions
2 of cooperating?

3 A. No, ma'am.

4 Q. Was that an easy decision for you?

5 A. Still not.

6 Q. Still having a hard time with it?

7 A. Yes, ma'am.

8 Q. And why is that?

9 A. I've been a gang member all my life. I've
10 been a gang member all my life. I put my all into
11 the SNM. Every day I tried to be a better SNM
12 member. I just gave it my all. I was good at it.
13 That's something I was great at, something that I
14 felt you put in the work, and they can't take the
15 respect away from you. They can't -- you know, you
16 earn it; they've got to give it to you. And I did
17 everything for the SNM that they asked me for. I
18 did everything above and beyond. And it was hard.
19 I'm a gang member. I was a gang member. That's all
20 I've been all my life.

21 Q. Now, did you eventually enter into a plea
22 agreement?

23 A. I did.

24 Q. All right.

25 MS. ARMIJO: And I'm going to move for the

1 admission of 682 into evidence. I believe there is
2 no objection.

3 THE COURT: Any objection to Government's
4 Exhibit 682?

5 MR. VILLA: No objection.

6 MR. LOWRY: No objection, Your Honor.

7 THE COURT: All right. Not hearing any
8 objections, Government's Exhibit 682 will be
9 admitted into evidence.

10 (Government Exhibit 682 admitted.)

11 BY MS. ARMIJO:

12 Q. Okay. We're looking at the first page.
13 Is this the first page of your plea agreement?

14 A. Yes.

15 Q. And does it have -- I'm going to circle --
16 it says "criminal cause numbers." Does that reflect
17 that this covers both cases of yours?

18 A. Yes, ma'am.

19 Q. All right. And I'm going to go to page 3,
20 please. All right. And on page 3 there is
21 information as to sentencing. And it says under
22 cause number 15-4269 -- is that the case that you
23 were talking about in reference to Mr. Sosoya?

24 A. Yes, ma'am.

25 Q. And in that case you can be sentenced up

1 to 20 years on one count, and up to 10 years on the
2 other count; is that correct?

3 A. Yes, ma'am.

4 Q. And if we could go to the next page,
5 please. All right. And then paragraph 8 of this
6 exhibit, which is Exhibit Number 682, it has here
7 the punishment as to Count 7 in this case; is that
8 correct?

9 A. Yes, ma'am.

10 Q. Okay. It says a term of imprisonment of
11 life. Okay. Does that mean -- what is your
12 understanding of that?

13 A. It's over. You never get out.

14 Q. All right. So that doesn't say it's a
15 possible up to life, does it? What's your
16 understanding?

17 A. No -- oh, okay, if I would have went to
18 trial or from this?

19 Q. Yes.

20 A. If I went to trial?

21 Q. What you pled to. It says a term --

22 A. Up to 30 years, I think.

23 Q. Okay. We saw the other two that are 30
24 years; correct?

25 A. Right.

1 Q. But as you pled to this case -- and we'll
2 get to any benefit --

3 A. All right.

4 Q. -- in a minute. But as it stands right
5 now, as it pled as to Count 7, what is it that you
6 are facing a mandatory term of?

7 A. A life sentence.

8 MR. VILLA: Objection, Your Honor. It's
9 misleading.

10 THE COURT: Well, I'll let you go back
11 into it on cross. Overruled.

12 BY MS. ARMIJO:

13 Q. Does it say that you're subject to
14 anything else, other than life?

15 A. No, not that I see.

16 MR. VILLA: Same objection.

17 THE COURT: Overruled.

18 A. Five years supervised release. But that
19 shit doesn't matter, because you're doing life. You
20 know what I mean?

21 BY MS. ARMIJO:

22 Q. Is there any -- and if you know this, yes
23 or no -- did your attorney tell you whether or not
24 in the federal system there is any parole?

25 A. There is no parole in the federal system.

1 Q. Okay. Now, are you aware of what a life
2 sentence in the state is?

3 A. I'm not.

4 Q. Okay. Because you were never sentenced to
5 a life --

6 A. No, I was not.

7 Q. Now, did you in this plea agreement have
8 any agreements with the United States as to what
9 your sentence is in the plea agreement?

10 A. I think it was just to run the first one
11 concurrent, and sign over my state custody.

12 Q. All right. Now, do you believe that
13 that's in there, or is that something you just want
14 to occur -- okay, no. Here we go. Sorry. Going to
15 page 7 of this document. All right. I'm going to
16 paragraph 13, paragraph C. Is that what you're
17 referring to, that the United States has no
18 objection to the sentences in both your federal
19 cases running concurrently with each other?

20 A. Yes, ma'am.

21 Q. And that the United States has no
22 objection with the sentences in these cases to run
23 concurrent with any state sentence that you're
24 serving?

25 A. Yes, ma'am.

1 Q. Is that the only agreement that you have
2 with the United States?

3 A. I believe I was given a 5K.

4 MR. VILLA: Objection.

5 THE COURT: I'm sorry?

6 MR. VILLA: Withdrawn.

7 THE COURT: All right.

8 A. I was given a 5K, a Kastigar letter.

9 BY MS. ARMIJO:

10 Q. I was going to talk about that. When you
11 spoke to the United States, did we provide you with
12 a letter?

13 A. Yes, ma'am.

14 Q. That you went over with your attorney?

15 A. Yes, ma'am.

16 Q. And you mentioned a Kastigar. What do you
17 mean by "Kastigar"?

18 A. I think it's for cooperation; that --
19 well, I don't know the whole thing of it. I just
20 know it's something I had to sign before I started
21 talking to you guys.

22 Q. Did your attorney advise you that you
23 could have certain protections by talking to the
24 United States?

25 A. Oh, right, right.

1 Q. Does that sound familiar?

2 A. Yes, he spoke to me about stuff like that.

3 Q. Now, you mentioned 5K.

4 A. Um-hum.

5 Q. What is 5K to you? What does that mean?

6 A. Well, it means that there is a
7 possibility, up to the judge's discretion, that I
8 can get a sentence reduction, from what I
9 understand.

10 Q. And who makes that decision?

11 A. The judge.

12 Q. As far as what the reduction is?

13 A. I believe so.

14 Q. And who -- do you know -- this is yes or
15 no -- do you know who, in fact, files that motion
16 for the judge to consider it?

17 A. My attorney.

18 Q. Your attorney does?

19 A. I believe so. I'm not aware of it.

20 Q. Okay.

21 A. I haven't asked.

22 Q. Okay. But it's your understanding that
23 there is a possibility -- and what is the 5K based
24 on; do you know?

25 A. To be honest, I don't know. I was just

1 happy to be away from the gang life. I was so
2 excited to be away from gang life that if you guys
3 want to give me a sentence reduction, give me a
4 sentence reduction. You know? And even though I
5 pled out to these charges and I was facing a zero
6 life, now I just have no more hatred. I was just so
7 happy to be rid of the gang life.

8 So when you're asking me the guidelines
9 and stipulations to it, I can't tell you.

10 Q. All right.

11 A. I would have to go over it and read it.
12 But there is a lot of stuff I don't understand. I
13 just know that I signed it, and it's part of getting
14 the fuck away from the gang life.

15 Q. Now, I believe the date of that is
16 November 1st of 2017; is that correct?

17 A. The date of what?

18 Q. Of your guilty plea.

19 A. I'm just aware of October 24. I don't
20 remember what the other --

21 Q. Okay. If you can look on the screen --

22 A. Where?

23 Q. Maybe we can go to the last page of this
24 document. All right. Do you see there that it
25 says, "Agreed and signed this 1st day of November"?

1 A. Yes, ma'am.

2 Q. And do you see on top of that that it says
3 "Document 183, filed 11/1/17"?

4 A. I do.

5 Q. Okay. What does that lead you to believe?

6 A. November 1st, I pled guilty to these
7 charges on both indictments, of 2017.

8 Q. So up until October 24, were you
9 cooperating with the United States?

10 A. No.

11 Q. Since that time, have you received any
12 other benefits from the United States?

13 A. I think you guys gave me \$50 a month, or
14 something like that.

15 Q. In your commissary?

16 A. Yes.

17 Q. And the day of your plea agreement, did
18 you have an opportunity to meet with your family --

19 A. I did.

20 Q. -- to tell them the situation?

21 A. I had -- I think it's a threat analysis
22 meeting with Mr. Acee and Nancy Stemo and the
23 prosecution, on what danger my life would be in, and
24 what danger my family's life would be in.

25 MR. VILLA: Objection, Your Honor.

1 Q. All right.

2 THE COURT: Do you want to elicit this?

3 MS. ARMIJO: I'm sorry?

4 THE COURT: Do you want to elicit this?

5 MS. ARMIJO: Yes.

6 BY MS. ARMIJO:

7 Q. Now, did you -- as part of your
8 cooperation, did you have a chance, then, after your
9 guilty plea to talk and meet with your family?

10 A. Yes, ma'am.

11 Q. Okay. And was that a benefit that you
12 received as part of your guilty plea?

13 A. It wasn't something I was told I would get
14 for pleading guilty. I thought it was just a threat
15 analysis meeting.

16 Q. Okay.

17 A. But I --

18 Q. Did it have anything to do with you
19 pleading guilty?

20 A. No.

21 Q. Okay. But it was something that happened
22 after you pled guilty?

23 A. Yes, ma'am.

24 Q. And I believe you indicated now -- did you
25 have -- do you still have your tablet?

1 A. I do.

2 Q. Okay. It was never taken away from you?

3 A. No, ma'am.

4 Q. You never had anything to do with the
5 tampering of your tablet?

6 A. I never lived around any of those guys
7 that were doing that.

8 Q. Oh, okay.

9 A. I was in Chaparral the whole time with the
10 rest of the defendants.

11 MS. ARMIJO: I have no further questions.
12 Thank you.

13 THE COURT: Thank you, Ms. Armijo.

14 Mr. Lowry, are you going to go first? Mr.
15 Villa?

16 MR. VILLA: Yes, Your Honor.

17 THE COURT: All right. Mr. Villa.

18 MS. ARMIJO: Oh, Your Honor, I do need to
19 move into evidence -- I'm sorry -- numbers 751 and
20 752 at this time. And those are the two diagrams
21 that previously the defense had allowed me to use
22 and to write on.

23 THE COURT: Any objection to those?

24 MS. JACKS: No.

25 MR. VILLA: No, Your Honor.

1 THE COURT: Not hearing any objection,
2 Government's Exhibits 751 and 752 will be admitted
3 into evidence.

4 (Government Exhibits 751 and 752
5 admitted.)

6 THE COURT: All right. Mr. Villa.

7 MR. VILLA: Sorry, Judge.

8 THE COURT: That's all right. Take your
9 time.

10 CROSS-EXAMINATION

11 BY MR. VILLA:

12 Q. Good afternoon, Mr. Rodriguez.

13 A. Good morning -- good afternoon. It's been
14 a long day.

15 Q. It has been.

16 So Mr. Rodriguez, I want to take you back
17 to what you told Ms. Armijo about when you took the
18 piece from Mr. Perez' walker. Okay?

19 A. All right.

20 Q. And I think it was your testimony that you
21 went into his cell; correct?

22 A. Yes, sir.

23 Q. And that you asked the CO to open the door
24 to his cell; true?

25 A. Yes, sir.

1 Q. And so when somebody asks the CO to open
2 the cell, they'll do it for you?

3 A. One cell at a time, yes. Open one, then
4 open the next one.

5 Q. So when you asked, they opened Mr. Perez'
6 cell?

7 A. Yes, sir.

8 Q. And you testified that you walked in there
9 and you took the walker; right?

10 A. Yes, sir.

11 Q. You put it on the bed?

12 A. I tilted it at an angle where the bolt was
13 facing up, and it was resting on the end of the
14 mattress.

15 Q. The mattress on the bed?

16 A. Yes.

17 Q. And you grabbed it, and you said you were
18 looking for some nail clippers to take it off;
19 right?

20 A. I turned around to ask Dan, and Dan wasn't
21 there. I seen some nail clippers on the table.
22 They were Rudy Perez'. I got them, took off the
23 lever, the little nail that holds the lever
24 together, and you open them up, like some pliers,
25 and twisted it off.

1 Q. And you were able to take the piece off
2 yourself?

3 A. Yes, sir.

4 Q. You would agree with me that that piece --
5 can I see Government's Exhibit 89 -- you would agree
6 with me that piece is used to stabilize the walker;
7 correct?

8 A. It is.

9 Q. We'll take a look at the picture here in
10 just a second.

11 A. I don't know the construction of it, but
12 it's there for a reason.

13 Q. You could tell just by looking at it that
14 that was a stabilization piece; correct?

15 A. Yes, sir.

16 Q. Give me just a second. We'll look at
17 that.

18 So Mr. Perez didn't do anything to help
19 you actually physically take the piece off the
20 walker?

21 A. No, sir.

22 Q. He didn't help you unscrew it or anything
23 like that?

24 A. No, he did not.

25 Q. He didn't tell you how to take it off?

1 A. No.

2 Q. He just stood there?

3 A. He just stood there. Told me he was down
4 for whatever.

5 Q. We'll get to that in just a minute. But
6 I'm just talking --

7 A. Okay.

8 Q. -- physically what Mr. Perez did. He
9 didn't assist you in any way physically?

10 A. No, sir.

11 Q. And I think it was your testimony that you
12 got to Southern, December 2013?

13 A. Yes.

14 Q. So this happens March 7, 2014; correct?

15 A. Yes, sir.

16 Q. Just about three months later?

17 A. Three months later.

18 Q. January, February, March. Three months
19 later. And December 2013 was the first time you met
20 Mr. Perez?

21 A. It is.

22 Q. You didn't know him before that?

23 A. I did not.

24 Q. But during those three months that Mr.
25 Perez was there, and you were there at the same

1 time, in blue pod, Mr. Perez was pretty sick, wasn't
2 he?

3 A. Not at that time. He came back from
4 surgery.

5 Q. He had come back from surgery from --

6 A. I didn't know his conditions or nothing.
7 I never really spoke to him, so I don't know how bad
8 his illness was or anything like that.

9 Q. So you didn't know what his conditions
10 were?

11 A. I did not.

12 Q. So the people that know his conditions --
13 they could speak better to that?

14 A. Yeah.

15 Q. You would agree with me that he spent most
16 of his time in his cell?

17 A. Most of the time he spent in the cell.

18 Q. He didn't come out of his cell very often?

19 A. Once in a while, but not very often.

20 Q. He didn't go to the yard very often?

21 A. He would go to the yard with us, yes.

22 Q. But not every day?

23 A. No.

24 Q. And a lot of people would go to yard every
25 day, but not Mr. Perez?

1 A. A majority, some -- like maybe three out
2 of a pod will go every day. Some want to stay in.
3 But yes, he would come out maybe four times a week.

4 Q. And when you saw him, he didn't look
5 healthy; right? He had a walker, didn't he?

6 A. I've seen him run around, and Dan would
7 have him in a little workout routine. He can move.

8 Q. You'd agree with me that Mr. Perez -- do
9 you know that he's 49 years old?

10 A. Yes.

11 Q. And three years ago, I guess he's about 46
12 years old? I'm bad at math.

13 A. Was it three years ago this happened?

14 Q. Maybe four years ago. So about four years
15 ago he's 45; right?

16 A. Right.

17 Q. And he looked about the way he looks now?
18 Maybe just a little different?

19 A. He looks like he put on an extra 50, 60
20 pounds since then.

21 Q. Okay. Now, Mr. Rodriguez, let's talk
22 about Exhibit 89 here, that -- the sheets that I'm
23 drawing the line from. That's where you took the
24 piece off; right?

25 A. Yes, sir.

1 Q. And Mr. Perez, again, didn't help you do
2 that?

3 A. No, he did not.

4 Q. And I think that you testified that you
5 don't know how the sheets got on there; right?

6 A. No.

7 Q. But the sheets -- at least just from
8 looking at this photograph, you would agree with me,
9 if the piece you took off stabilized the walker, the
10 sheets are being used right in the place where you
11 took the piece off; right?

12 A. Yes.

13 Q. So it helped stabilize the walker; right?

14 A. Right.

15 Q. Now, you testified that while you were
16 taking the piece off of Mr. Perez' walker, he said,
17 "I'm down for whatever, as long as it's not me"?

18 A. Yes, sir.

19 Q. Right? And then Ms. Armijo asked you, was
20 there anything unusual about the way he spoke? And
21 you said no; right?

22 A. No.

23 Q. And she asked, were his mannerisms normal?
24 And you said no; right?

25 A. They were normal.

1 Q. But when you talked to the Government and
2 Agent Acee on October 24, 2017, that's not exactly
3 what you said, is it?

4 A. I don't recall what I said then.

5 Q. Okay. Well, we'll get to what you said
6 then in just a minute. But let me ask you, since
7 October 24, 2017, how many times have you met with
8 the United States?

9 A. As far as prep?

10 Q. Period.

11 A. In reference to this case?

12 Q. Yes, sir.

13 A. I think my initial debrief, and then last
14 Saturday.

15 Q. So your initial debrief was October 24;
16 correct?

17 A. Yes.

18 Q. And then you're saying that the other time
19 you met with them was last Saturday?

20 A. I think it was last Saturday, yes, on a
21 prep.

22 Q. And those are the only times?

23 A. Yes, sir.

24 Q. And that includes anything that you've
25 done in connection with your cooperation?

1 A. Well, I met with, I think -- who was it?
2 Chris Cupit on a time. But it had nothing to do
3 with this case.

4 Q. Okay. Any other times that you met with
5 the Government related to this case, or anything
6 having to do with cooperation against the SNM?

7 A. I think maybe total three times.

8 Q. Okay. So we know about October 24; right?

9 A. Right.

10 Q. And we know about last Saturday?

11 A. Right.

12 Q. Then you said there was one other time?

13 A. Yeah. But I don't know if I can disclose
14 it. But it's other investigations.

15 Q. Well, can you tell me the date?

16 A. I cannot.

17 Q. Can you tell me the month?

18 A. I got up to the North. It was probably
19 late November.

20 Q. And with whom were you meeting with the
21 Government?

22 A. Chris Cupit.

23 Q. Anybody else?

24 A. No.

25 Q. Agent Acee wasn't there?

1 A. No, he was not. There was a guy named
2 Paul -- Paul or Roy -- I don't remember his name.
3 He kind of resembles Matthew Beck.

4 Q. But none of these individuals sitting at
5 this table were there?

6 A. No.

7 Q. And that's the only time you had meetings
8 with the Government?

9 A. Yes, sir.

10 Q. So you didn't meet with them to prepare
11 for your trial testimony except for Saturday?

12 A. Except for Saturday.

13 Q. This past Saturday?

14 A. Yes, sir.

15 Q. Who was present at that meeting?

16 A. I think Ms. Armijo, Castellano, and Beck.

17 Q. Anybody else?

18 A. I think Bryan Acee. I'm not sure. Was
19 he? No, he wasn't there on Saturday. It was just
20 the prosecutors.

21 Q. What were you told by the prosecutors?

22 A. As far as what?

23 Q. What did they tell you?

24 A. They didn't really tell me much. I told
25 them what my testimony would be.

1 Q. Okay. Did they talk to you about the
2 testimony that's come out in trial so far?

3 A. No.

4 Q. Did they talk about the opening statements
5 or what the defenses of the defendant are?

6 A. No.

7 Q. Other than those three, nobody else was
8 there?

9 A. No. There was correctional officers
10 sitting for security, but they were just on the
11 outer -- like watching the door and shit like that.

12 Q. Anybody else present?

13 A. Not that I'm aware of.

14 Q. We've covered all the meetings you've had
15 with either the United States attorneys or Agent
16 Acee or anybody else from the FBI; right?

17 A. Again, I can't recall any off the top of
18 my head right now. I believe that's it.

19 Q. Okay. I mean, October 24, 2017, I guess
20 that's, what, January, December, November, about
21 three and a half months ago?

22 A. Right.

23 Q. So not that long ago; right?

24 A. Not long ago.

25 Q. So your memory is pretty fresh, isn't it?

1 A. My memory is very good.

2 Q. You seem to have a pretty good memory?

3 A. I do.

4 Q. So you don't remember any other meetings?

5 A. I don't.

6 Q. That's all you've got?

7 A. Pretty much all I got.

8 Q. So now, let's talk about what you said to
9 Agent Acee -- well, let me back up. On October 24,
10 2017, when you sat down and met with the Government,
11 Ms. Armijo was there; right?

12 A. Yes.

13 Q. Mr. Castellano was there; right?

14 A. Yes, sir.

15 Q. Mr. Beck was there?

16 A. Yes.

17 Q. And there was an FBI agent by the name of
18 Nancy Stemo there?

19 A. Yes, sir.

20 Q. Was Agent Acee there also?

21 A. On that time?

22 Q. Yes, sir, October 24.

23 A. No, he was not there that time.

24 Q. And you talked about at that time, on
25 October 24, how you took the piece from Mr. Perez'

1 walker; right?

2 A. I did.

3 Q. And you talked about the statement you
4 made, where Mr. Perez said, "I'm down for whatever,
5 as long as it's not me"; right?

6 A. Right.

7 Q. You don't remember what you said about Mr.
8 Perez's mannerisms? Is that what you're telling
9 this jury?

10 A. I don't think I paid attention to them.

11 Q. You don't think you paid attention to
12 them?

13 A. No.

14 MR. VILLA: May I approach, Your Honor?

15 THE COURT: You may.

16 BY MR. VILLA:

17 Q. Mr. Rodriguez, I'm going to show you a
18 document. And when you answer, you'll have to use
19 the mic. I talk pretty loud, but -- so this is a
20 document from the Federal Bureau of Investigations;
21 right?

22 A. Yes, sir.

23 Q. And it says October 24, 2017?

24 A. Yes, sir.

25 Q. And it says that Special Agent Nancy Stemo

1 interviewed Mario Rodriguez, a/k/a Blue; right?

2 A. Yes.

3 Q. That's you?

4 A. That's me.

5 Q. That's the same date that you did your
6 interview?

7 A. Right.

8 Q. I'm going to flip over, and I'm going to
9 show you page 6 of this document; right?

10 A. Okay. 6 of 9.

11 Q. And you said --

12 MS. ARMIJO: Objection, improper
13 impeachment. If he wants to show that to the
14 witness to see if it refreshes the witness'
15 recollection, and then ask him questions about it.
16 But just reading the document is improper without
17 first allowing him to read it.

18 THE COURT: Are you trying to refresh his
19 memory?

20 MR. VILLA: No, Your Honor. It's
21 impeachment of his direct testimony.

22 THE COURT: Well, I'll let this continue.
23 Overruled.

24 BY MR. VILLA:

25 Q. So you talk about the part where you're

1 going to take the piece from the walker. And it
2 says, "Perez appeared scared, and stated that he,
3 Perez, 'was down for whatever as long as it was not
4 me.'"

5 Did I read that right?

6 A. Yes, sir.

7 Q. So Agent Stemo in her interview said that
8 you said Mr. Perez looked scared; right?

9 A. That's what she says.

10 Q. Okay. And it also says that "Rodriguez,"
11 you, "understood Perez did not want to be hurt, and
12 would go along with the hit if he, Perez, did not
13 otherwise have to be involved"; right?

14 A. Right.

15 Q. And I read that right?

16 A. You read that right. I think the only
17 thing is that he didn't want to be hurt, would be
18 that he knew if he didn't give it up, you know,
19 you're not a part of the hit. You know, everyone
20 has their part in the SNM.

21 Q. So -- and if he didn't give it up, he
22 could get himself in trouble, too, couldn't he?

23 A. Yes.

24 Q. He could be killed?

25 A. Possibly.

1 Q. Right? I mean, that's a potential
2 consequence?

3 A. That's a potential consequence.

4 Q. And after you take the walker piece and
5 leave, if he had said to a Correction officer, "Hey,
6 Mr. Rodriguez just came and took my piece. I think
7 he's going to use it to hurt somebody," that's
8 telling on you; right?

9 A. That's telling. Yes, it is.

10 Q. And that could get him killed?

11 A. Yes.

12 Q. So I want to back up just a little bit and
13 talk to you about what happened with Mr. Molina.

14 Before Mr. Urquizo ever got to Southern
15 New Mexico, you made a phone call to his brother,
16 didn't you?

17 A. I recall calling his brother one time,
18 yes.

19 Q. And the purpose of the phone call was to
20 get the message to Mr. Urquizo to bring that
21 paperwork down?

22 A. No.

23 Q. Okay. So if Mr. Urquizo testified that
24 that was the purpose, then Mr. Urquizo is incorrect?

25 A. That's incorrect. I never asked about no

1 paperwork in that conversation.

2 Q. But you would agree with me, as you
3 testified on direct, that you were willing to do the
4 hit on Mr. Molina if you saw the paperwork?

5 A. Yes.

6 Q. And you were willing to do that before you
7 ever left PNM; right?

8 A. If I had taken the paperwork with me?
9 Yes.

10 Q. And when you left PNM, you thought, if I
11 get down there and I see the paperwork at a later
12 date, you're willing to do the hit?

13 A. Yes.

14 Q. And as a matter of fact, when this
15 paperwork arrived, at least according to you, you
16 volunteered to do the hit, didn't you?

17 A. Myself and Sanchez, yes.

18 Q. But you wanted to do it; you wanted to be
19 involved.

20 A. "Me and you."

21 Q. What's that?

22 A. I asked him, "Me and you, right?" Yes, I
23 was going to be involved, yes.

24 Q. And as a matter of fact, it was you that
25 noticed Mr. Urquizo's name on the board, and knew he

1 was arriving there in the yellow pod; right?

2 A. No.

3 Q. Well, you didn't notice his name on the
4 board?

5 A. I wasn't the initial one that noticed it.

6 Q. I'm not asking about anybody else. But
7 you noticed it; right?

8 A. I went to the top tier, in the left
9 corner, and read the white board.

10 Q. That's the board in the control room?

11 A. Yes, sir.

12 Q. And based on that, you went to try to
13 communicate with the yellow pod, to try to
14 communicate with Mr. Urquizo; right?

15 A. He wasn't there at that time. That was
16 three or four hours prior to him arriving.

17 Q. I'm sorry, when they arrived --

18 A. Right.

19 Q. -- you had the opportunity to try to find
20 out, does he have the paperwork?

21 A. No, I didn't ask him at that time.

22 Q. I don't mean right when he arrived. I
23 mean, you knew he arrived. And the next day you get
24 out, and you're in the sally port; right?

25 A. Right.

1 Q. And you wanted to know about the
2 paperwork; right?

3 A. Yes, sir.

4 Q. So that you could see it?

5 A. Yes, sir.

6 Q. Because if the paperwork indicated that
7 Mr. Molina was telling, you were going to help
8 execute this hit, weren't you?

9 A. I was. I was and I did.

10 Q. And when you got the paperwork and you
11 looked at it, I think you said in your direct
12 testimony that you were waiting to see if Mr. Molina
13 had named names?

14 A. Right.

15 Q. And I don't think Ms. Armijo asked you the
16 question, but did the paperwork that you looked at
17 indicate whether Mr. Molina named names?

18 A. There was no names in it.

19 Q. It did have Mr. Molina's name?

20 A. Yeah, in bold letters and underlined, I
21 believe.

22 Q. And did it indicate that Mr. Molina was
23 telling on somebody?

24 A. Yeah, it was telling. According to the
25 SNM, yeah, it's telling.

1 Q. Tell me why it was telling.

2 A. Well, because he disclosed that there was
3 a crime that took place, and where the evidence was
4 thrown away at.

5 Q. But he didn't name anybody's name?

6 A. He did not.

7 Q. But that was enough for you, at least in
8 your mind, to do the killing; right?

9 A. When Dan said, "It's done," I said, "Fuck,
10 it's done."

11 Q. I'm not asking you about Mr. Sanchez. I'm
12 asking about you.

13 A. At first, inside I looked at it and, you
14 know, it was stamped. It was real paperwork. It
15 just didn't seem that it was that bad. Certainly
16 not as bad as what I'm doing, you know.

17 Q. And let me ask you this. Does it matter
18 whether what Mr. Molina says to the police, where
19 the evidence is, that a crime occurred -- does it
20 matter whether what Molina is saying to the police
21 is true or not?

22 A. Well, it's in a police report, no.

23 Q. So the fact that he said it, whether that
24 information is actually true is enough to get him
25 killed?

1 A. It could have been him that thrown it, and
2 saying that it was someone else in the car. And
3 that's enough.

4 Q. Or he could just be making stuff up;
5 right?

6 A. He could be making stuff up.

7 Q. So it doesn't matter if he's telling the
8 truth or telling lies? Telling is telling?

9 A. It's in a police report and we take it as:
10 Why are you going to say it, if it's not the truth?

11 Q. I mean, there are reasons why people might
12 lie to the police; right?

13 A. I don't know if you're going to implicate
14 yourself and still lie about it.

15 Q. I mean, I'm just saying generally
16 speaking.

17 A. I couldn't say. I don't know.

18 Q. So let's talk about SNM rules, because you
19 talked a little bit about SNM rules.

20 A. Right.

21 Q. If you found out that somebody said
22 something to the police or the prosecutors, or
23 testified in court, or whatever, does it matter
24 whether you think they were telling the truth or
25 not?

1 A. Most of the time, no. There is a lot of
2 politics behind it and further SNM stuff going on.
3 But for the most part, no.

4 Q. I mean, you agree with me that sometimes
5 witnesses come to court and lie, don't you?

6 A. Well, they probably do, yes.

7 Q. Okay. So whether -- if an SNM member or
8 somebody else came to court, whether they tell the
9 truth or tell a lie, they're in trouble?

10 A. Yes.

11 Q. So you get the information from the
12 paperwork that you looked at, and you start putting
13 things in motion, don't you?

14 A. Myself and Daniel Sanchez, yes.

15 Q. Yourself?

16 A. Right.

17 Q. Right?

18 A. Right.

19 Q. I think one of the things that you did
20 first was take the piece from Mr. Perez' walker;
21 right?

22 A. In, like, the -- my actions? Yes. Yeah.

23 Q. Yes, let's talk about your actions.

24 That's what I want to talk about.

25 A. Yeah.

1 Q. You took the pieces from Mr. Perez'
2 walker, and then you took them into your room;
3 right?

4 A. Yes.

5 Q. And started to break it up so you could
6 make shanks?

7 A. At that time, not right away, no.

8 Q. I understand.

9 A. I put it in my hamper.

10 Q. I know it happened over a couple of hours,
11 basically. But if I understand it correctly, you
12 went to Mr. Perez' room on March 7, 2017; right?

13 A. Yeah, I was called over there.

14 Q. The same day that Mr. Perez (sic) --
15 excuse me, the same day that Mr. Molina was killed?

16 A. Same day, yes.

17 Q. Okay. And I think it was your testimony
18 that you went to Mr. Perez' room before you all went
19 to the big yard; right? Or is it called large yard?

20 A. Phone yard.

21 Q. Phone yard?

22 A. It's the yard right outside the unit.

23 Q. And that's where you went to Mr. Perez'
24 room right before that?

25 A. It was maybe, yes, right before that. I

1 don't know the timeframe. But yeah, it was before
2 we went to yard.

3 Q. I think on your direct testimony you
4 said --

5 A. 2:30, something like that.

6 Q. Let me finish the question, okay? Because
7 it's hard to write everything down.

8 So it's about 2:30 that you went and took
9 that piece?

10 A. Probably, yes.

11 Q. Okay.

12 A. A little bit before that.

13 Q. And you didn't go out to the yard --

14 A. No.

15 Q. -- because you were making shanks?

16 A. I was making shanks.

17 Q. In your room.

18 A. In my room.

19 Q. By yourself.

20 A. By myself.

21 Q. Alone?

22 A. Alone.

23 Q. You covered the cell windows so nobody
24 could see what you were doing?

25 A. I did.

1 Q. You broke the pieces up into three pieces;
2 right?

3 A. Yes, sir.

4 Q. Sharpened them?

5 A. Sharpened two of them.

6 Q. Sharpened two of them. With the idea that
7 those two pieces were going to go to Jerry Armenta
8 and Jerry Montoya; right?

9 A. Yes, sir.

10 Q. And you called them handles, but it's just
11 putting tape around them; right?

12 A. Right. Napkins with Saran Wrap.

13 Q. So that it's easier to hold the shank?

14 A. Yes, sir.

15 Q. Because if they're holding the shank
16 without those handles and they try to stab somebody,
17 it's just going to slip?

18 A. No. But it just makes it easier.

19 Q. It could slip; right?

20 A. That's what the rope is for. It could
21 slip whether you have a handle or not.

22 Q. I understand. But a handle makes it
23 easier to handle?

24 A. That's what it's there for.

25 Q. And you sharpen it, so it's easier to stab

1 somebody with.

2 A. Of course, yes.

3 Q. You don't have to sharpen it. But it
4 wouldn't be as easy to stab somebody.

5 A. I would probably get killed if I didn't
6 sharpen it; gave them dull weapons.

7 Q. So you sharpened it, made sure they were
8 good weapons?

9 A. Right.

10 Q. And you gave both of those weapons to
11 Jerry Armenta and Jerry Montoya; right?

12 A. I did.

13 Q. So you, yourself, gave one to Jerry
14 Montoya, I think you said in your cell; correct?

15 A. Jerry Armenta came to my cell with Daniel
16 Sanchez.

17 Q. I'm sorry. You gave it to Jerry Armenta,
18 and then you gave it to Jerry Montoya after that?

19 A. I was told to go -- to let Jerry Montoya
20 know that he was going to commit the assault.

21 Q. I know you're telling the jury that that's
22 what you were told. But you're the one that
23 actually gave it to Jerry Montoya.

24 A. Yes, sir.

25 Q. And when you went into Jerry Montoya's

1 room, he got scared, too; right? He said -- he put
2 his hands up, and I think in your testimony you said
3 he thought you were going to stab him; right?

4 A. That's what I assumed.

5 Q. Okay. I mean, that was what you were
6 observing.

7 A. Right. That's what I observed.

8 Q. And then, after you hand the shanks to
9 those two folks -- or maybe it was before -- you
10 also then recruited Timothy Martinez?

11 A. Before.

12 Q. Before?

13 A. I was told -- well, yeah, my actions.

14 Q. You went to Timothy Martinez?

15 A. I went to Timothy Martinez before the 4:00
16 count. While I was sharpening the weapons and
17 breaking them down, I seen him come back from the
18 wheelchair program. I took the curtain down from my
19 window, and I put the weapons under my mattress, and
20 I told the CO to open my door. And I pulled over
21 Timothy, and started speaking to him about what they
22 wanted him to do.

23 Q. So you said to Timothy Martinez: We need
24 you to knock out Javier Molina or incapacitate him,
25 or something like that?

1 A. No.

2 Q. What did you want Timothy Martinez to do?

3 A. I told him Dan Dan wanted him to knock the
4 fuck out of Molina.

5 Q. Okay. So without the colorful language,
6 you told Timothy Martinez he needed to knock out
7 Molina?

8 A. Right.

9 Q. All right, so --

10 A. And based on -- Daniel wanted him to knock
11 him out.

12 Q. That's what you're saying.

13 A. Right.

14 Q. But you're the one who said to Timothy
15 Martinez that; right?

16 A. Yes.

17 Q. And you knew that Timothy Martinez was
18 Javier Molina's friend?

19 A. I did.

20 Q. And you were friends with Timothy
21 Martinez?

22 A. I was. And Molina.

23 Q. And Javier Molina?

24 A. Yes.

25 Q. But because of your friendship with

1 Timothy Martinez, you said to him, when you had this
2 conversation, "Hey, if you don't want to do it, I'll
3 do it for you"?

4 A. Do it for you.

5 Q. You were willing to do that?

6 A. I was.

7 Q. So that you're the one that would be
8 helping to kill Molina without Timothy Martinez
9 having to do that.

10 A. Yes, sir.

11 Q. And I think you testified about this a
12 lot, but one of the reasons you were willing to do
13 this is you said you were loyal?

14 A. Loyal.

15 Q. Loyal to Timothy Martinez?

16 A. Loyal to SNM.

17 Q. Loyal to the SNM; right?

18 A. Yes, sir.

19 Q. Okay. So after all the pieces are in
20 place, Timothy Martinez has his job, Jerry Armenta
21 and Jerry Montoya have their jobs, then you guys
22 have count; right?

23 A. No.

24 Q. So all the jobs are in place before count
25 or after count?

1 A. The only job in place before count was
2 Timothy Martinez.

3 Q. Okay. So Armenta, Montoya got their
4 jobs --

5 A. They were supposed to be told point-blank
6 at that one point they went in; want no one to
7 contemplate it. Point-blank, "Here, you've got to
8 go do this, you're going to go do it."

9 Q. And you're the one that told them.

10 A. I was the one who was directed to tell
11 them.

12 Q. You did that after count?

13 A. After count.

14 Q. So after count happens -- count starts at
15 4:00; right?

16 A. Count ends at 5:00.

17 Q. Ends at 5:00?

18 A. Yes.

19 Q. So after 5:00 --

20 A. That happens.

21 Q. You go and tell Mr. Armenta and Mr.
22 Montoya what they've got to do.

23 A. No. Armenta and Daniel Sanchez come to my
24 room. I had no interactions with Armenta. Nothing.
25 That's Daniel Sanchez' friend.

1 Q. You gave Mr. Armenta a shank, didn't you?

2 A. He came to my room. And Daniel told him
3 what he was supposed to do. He came to my room for
4 the shank with Sanchez.

5 Q. Okay. But you gave the shank to Armenta?

6 A. Gave the shank to Armenta.

7 Q. And you gave it to Montoya?

8 A. Gave it to Montoya.

9 Q. Okay. And 15 minutes later, roughly,
10 you're in Molina's room; right?

11 A. I don't know; 15 to 20 later, yeah.

12 Q. Give or take?

13 A. Yes.

14 Q. Before that happened, you testified about
15 the situation downstairs where Mr. Molina and you
16 all are talking in the day room about going up to
17 Mr. Molina's room to get high; right?

18 A. Yes.

19 Q. Isn't it true that before that, Mr. Molina
20 talked about setting up some food downstairs, to get
21 a spread, to make dinner?

22 A. There was food for a spread. There is
23 pictures of it on the discovery.

24 Q. A spread is just laying out food, like the
25 tables, so you guys can have a community meal;

1 right?

2 A. Right.

3 Q. And Mr. Molina brought that up after
4 count, didn't he?

5 A. No. I don't remember who brought it up.
6 It might have been Molina, it might have been
7 Martinez. I don't remember exactly.

8 Q. One of those two?

9 A. One of them. It's all over the discovery,
10 something about a spread.

11 Q. And when you're saying "the discovery,"
12 you're talking about like all the reports, all the
13 paperwork in the case?

14 A. Supplemental reports.

15 Q. Like the report I showed you?

16 A. Right.

17 Q. With your statement and interview.

18 A. Yeah.

19 Q. And that's all on these tablets that we're
20 talking about.

21 A. No, that was in my state case.

22 Q. Well, it's on the tablets.

23 A. Yes, it's on the tablets.

24 Q. And all the discovery in this case is on
25 the tablet.

1 A. Yes, sir.

2 Q. The tablet that you still have.

3 A. I still have.

4 THE COURT: Mr. Villa, would this be a
5 good time for us to take our afternoon break?

6 MR. VILLA: Yes, Your Honor.

7 THE COURT: All right. We'll be in recess
8 for about 15 minutes. All rise.

9 (The jury left the courtroom.)

10 THE COURT: All right. We'll be in recess
11 for about 15 minutes.

12 (The Court stood in recess.)

13 THE COURT: All right. We'll go on the
14 record. Is there anything we need to discuss while
15 Ms. Standridge is getting the jury lined up? Ms.
16 Armijo?

17 MS. ARMIJO: No, Your Honor.

18 THE COURT: How about any of the
19 defendants? Do you have any issues?

20 Ms. Bhalla said she's cold.

21 MR. LOWRY: It's freezing.

22 THE COURT: Are y'all cold? Let's see
23 what we can do. Generally, I thought with as many
24 people as have been in the room, it's been a little
25 warm. I haven't been adjusting it.

1 (The jury entered the courtroom.)

2 THE COURT: All right. Mr. Rodriguez,
3 I'll remind you you're still under oath.

4 THE WITNESS: Yes, sir.

5 THE COURT: All right. Mr. Villa, if you
6 wish to continue your cross-examination of Mr.
7 Rodriguez, you may do so at this time.

8 MR. VILLA: Thank you, Your Honor.

9 BY MR. VILLA:

10 Q. While you were in Mr. Rodriguez' and Mr.
11 Montoya's cell giving him the shank and telling him
12 what he was going to do, you told him to put his
13 greens on; right?

14 A. While I was in Mr. Rodriguez' and
15 Montoya's cell?

16 Q. Mr. Montoya's cell, giving him the shank,
17 you told him to put his greens on; right?

18 A. Yeah, I told him to put his greens on,
19 yes.

20 Q. Because of blood?

21 A. For the blood, yeah.

22 Q. And when it came time for the attack on
23 Mr. Molina, you had greens on, too; right?

24 A. I had green pants. I always wear my green
25 pants.

1 Q. To make it harder to see the blood?

2 A. No. I wear them every day.

3 Q. No, I mean, that's why you were telling
4 Mr. Montoya to do that?

5 A. Yes.

6 Q. Now, let's see if we can play Government's
7 11. I think we have to play it from over here, and
8 if we can do camera 5, please.

9 Before we get this started, Mr. Rodriguez,
10 I want to clear this up. You don't remember who was
11 talking about the spread or having a meal? And if
12 we can just pause it a second.

13 But it might have been Mr. Molina or
14 somebody else?

15 A. I think that was something they came up
16 with, their defense in the disciplinary process.
17 You know, there is --

18 Q. Well, let me ask you this: Did you --

19 A. I don't recall.

20 Q. You don't recall --

21 A. I don't recall who came up with that, who
22 said we were having a spread.

23 Q. And in response to that, did you not say
24 that you guys should go to Mr. Molina's room and get
25 high?

1 A. Yeah, that was the plan.

2 Q. But you said that to Mr. Molina?

3 A. To go to whose room?

4 Q. Mr. Molina's room?

5 A. Yeah -- no, I think it was that we were
6 running low on Suboxone. And I told him, "I bet you
7 I can get Timothy to get high with us."

8 And we always go in there to do drugs,
9 shoot up, tattoos. And I think it just fell in
10 place as part of the plan. But that was the plan,
11 to go in there, under the guise of getting high.

12 Q. My question to you, Mr. Rodriguez, is
13 fairly simple, yes or no. Did you say to
14 Mr. Molina, in response to this conversation about
15 having a meal, "Let's go to your room and get high"?

16 A. I think I did, yes.

17 Q. Okay. So you made the suggestion to go
18 get high?

19 A. Yes.

20 Q. Because you knew that when that happened,
21 you guys were going to hit Molina?

22 A. That was the plan, yes.

23 Q. Now, you said you used drugs in there a
24 lot?

25 A. In Molina's room?

1 Q. Yes.

2 A. Yes, sir, everyone uses it to do drugs.

3 Q. I'm talking about -- what drugs have you
4 used in Mr. Molina's room?

5 A. Suboxone.

6 Q. What else?

7 A. That's it.

8 Q. You shoot that up?

9 A. Yes, sir.

10 Q. You talked about wanting to get a
11 syringe -- or provide a syringe to Mr. Urquizo, or
12 something like that?

13 A. No. Before I left, I asked him if he had
14 a syringe.

15 Q. So that you could shoot up Suboxone?

16 A. So I can have access to my own syringe.

17 Q. Did you take any other drugs while you
18 were in prison down there in Southern?

19 A. Not that I can recall. I think I did meth
20 one time.

21 Q. So mostly Suboxone?

22 A. Mostly Suboxone.

23 Q. How often would you do Suboxone?

24 A. Every day.

25 Q. Every day?

1 A. Every day.

2 Q. When was the last time you used Suboxone?

3 A. It's been since the last time when I left
4 Chaparral. Maybe before we moved to SHU 3. It's
5 been close to seven months.

6 Q. Seven months?

7 A. Close to seven months.

8 Q. Any other drugs in the last seven months?

9 A. No, sir.

10 Q. And how long were you using Suboxone on a
11 daily basis?

12 A. In where?

13 Q. When did you start using Suboxone on a
14 daily basis?

15 A. When I got to Southern.

16 Q. That's the first time?

17 A. Yeah. I never used to mess with no drugs
18 at all.

19 Q. So you're telling me before that,
20 throughout your time in prison --

21 A. I wouldn't mess with heroin.

22 Q. Let me finish the question, Mr. Rodriguez,
23 please. Before you got to Southern, while you were
24 in prison, did you ever use any other drugs?

25 A. Yes.

1 Q. What drugs?

2 A. Heroin and weed.

3 Q. How often did you use those?

4 A. Up in current years, or altogether?

5 Q. Altogether, in prison.

6 A. My first maybe three to four years in the
7 North facility, I did drugs as often as they were
8 around.

9 Q. And I think there is a little bit of
10 feedback coming from your mic. It's, like, ringing.
11 Maybe if you just talk a little bit farther away.
12 It's a double-edged sword. We have to be able to
13 hear, but we're trying to cut down on the ringing.

14 Okay. So you suggested to go to
15 Mr. Molina's room to shoot up Suboxone. And that
16 was something you had done on a daily basis.

17 A. Yes.

18 Q. And that got Mr. Molina to go up to his
19 room?

20 A. Yes.

21 Q. Because he wanted to use Suboxone, too?

22 A. That's the area we used to shoot up.

23 Q. And was Suboxone provided by Timothy
24 Martinez?

25 A. I believe so, yes.

1 Q. And I think it was your testimony that
2 before the assault actually happened, you thought
3 you guys were going to shoot up first?

4 A. Right.

5 Q. And then you would do the assault?

6 A. Yes, sir.

7 Q. You wanted to get high before you did it?

8 A. Well, the initial thought I had was it was
9 going to happen right away. But when I nodded to
10 Timothy the first time, the second time, the third
11 time, he didn't do it. So I figured we were going
12 to do a shot and it was going to happen while he was
13 shooting up. I thought it was going to happen as
14 soon as we went in there.

15 Q. You were nodding to Timothy to do it?

16 A. Right.

17 Q. Right, to get Mr. Molina, get him killed?

18 A. Move on him.

19 Q. That's what you wanted to convey when you
20 nodded to Mr. Martinez three times?

21 A. Right.

22 Q. So --

23 A. Not kill him; just incapacitate him.

24 Q. Because his job was to --

25 A. That was what he was called to do.

1 Q. Let's play now channel 5 here, that you
2 have on your screen. And I don't know if you're
3 able to fast-forward to about 17:18:30 seconds.
4 We'll let it go to get to that, Mr. Rodriguez, but
5 let me ask you another question.

6 If Mr. Martinez had ultimately not done
7 his part and, say, walked out of there and tried to
8 alert the COs, and get it stopped, his life would be
9 in danger? Is that what you're saying?

10 A. It would have been in danger, yes. Mine
11 and his, yes.

12 Q. Now, but you can't control Mr. Martinez,
13 if he did that; right?

14 A. I could not, no.

15 Q. So let's play it from there. We're at
16 17:18. And we'll pause it right about 17:18:30
17 seconds and 39 (sic). Is that what you see up
18 there, Mr. Rodriguez?

19 A. What are you asking me if I see?

20 Q. If you look at the top left, where it
21 shows the time.

22 A. 17:18:30.

23 Q. Yes, sir. Is that what it says?

24 A. That's what it says.

25 Q. And 39.

1 A. 390.

2 Q. Yes, sir, sorry. 390.

3 A. Right.

4 Q. So let's go -- I think you testified --
5 and Ms. Armijo stopped it at 17:18:40 seconds, that
6 the door was -- you told the CO to leave the door
7 open; right?

8 A. Right.

9 Q. Let's run it through 17:18:40.

10 (Tape played.)

11 A. There I am right there.

12 Q. That's you coming out real quick. You've
13 got the hat on?

14 A. Yes.

15 Q. Let's pause it there, please.

16 So I just want to ask you a couple of
17 questions about that. The CO wanted to close the
18 door, because they don't like the doors being
19 opened; right?

20 A. They leave one open. But sometimes a
21 CO -- they just want to close it.

22 Q. So you said, "Leave that door open,"
23 because you knew what was happening?

24 A. Right. The door needs to be open so Jerry
25 Montoya and Jerry Armenta could come in.

1 Q. And kill Mr. Molina?

2 A. Exactly.

3 Q. That's why you wanted the door open?

4 A. That's why the door was supposed to be
5 open.

6 Q. To make sure Mr. Molina got killed?

7 A. Exactly.

8 Q. Now, let's run it again, please. And
9 we'll go to about 17:19:30. And since we have about
10 30 seconds, Mr. Rodriguez, you testified that around
11 that time the door kind of wiggles?

12 A. Yeah. There is a control center. And
13 they'll hit the button, and you can hear the door
14 jiggle. And that's pretty much saying, "Hurry up
15 whatever you're doing, because I'm going to close
16 the door." That's pretty much what they're saying
17 to you. And then you'll see -- when you do that,
18 we'll come out and tell them, "Hold on."

19 It's a routine thing in the Level 4
20 system.

21 Q. Okay. So let's watch this part here.

22 (Tape played.)

23 A. There it is.

24 Q. Why don't we pause it, please. I think we
25 saw maybe about 7 seconds ago you stuck your head

1 out?

2 A. Right.

3 Q. That was you; right?

4 A. You can see my hand, but I think my head
5 is kind of blocking it, where the CO was jiggling
6 the door again.

7 Q. So the door wiggled, yes?

8 A. Yes, sir.

9 Q. And you stuck your hand out to say, "Wait,
10 keep it open"?

11 A. Yes, sir.

12 Q. Because you knew that Jerry Armenta and
13 Jerry Montoya were coming?

14 A. That's the plan.

15 Q. To kill Molina?

16 A. Yes, sir.

17 Q. So the reason you did that was to make
18 sure Molina gets dead.

19 A. Make sure he gets stabbed. And the
20 initial goal was to kill him, yes.

21 Q. Let's continue playing this, please.

22 (Tape played.)

23 Q. Mr. Rodriguez, you saw this individual in
24 the bottom right corner? And just for the record,
25 I'm paused at 17:19:59:390; correct?

1 A. 17:19:59:390.

2 Q. Yes, sir.

3 A. Yes.

4 Q. So I just circled an individual that we
5 saw in the common area and then sort of walking out
6 of the screen. Who is that?

7 A. That's Jeffrey Madrid.

8 Q. Jeffrey Madrid. And throughout the course
9 of this video, you don't ever see Rudy Perez;
10 correct?

11 A. No, sir.

12 Q. Do you see an individual at any point in
13 time whose name is Michael Hernandez?

14 A. I do not see him. I think the camera view
15 cannot see him where he's at. I don't see him on
16 the camera view.

17 Q. There was somebody in the pod named
18 Michael Hernandez?

19 A. Yes.

20 Q. Was his nickname Polo?

21 A. I think that's what it was.

22 Q. Do you know if Mr. Hernandez was bringing
23 in drugs or selling drugs?

24 A. I do not know.

25 Q. Let's go ahead and continue the video,

1 please.

2 (Tape played.)

3 Q. Right there. Thank you. So now,
4 Mr. Rodriguez, for the record, we're at
5 17:20:06:390; yes?

6 A. Yes, sir.

7 Q. The individuals I've just circled are
8 Jerry Montoya and Jerry Armenta; correct?

9 A. Yes, they are.

10 Q. I believe it was your direct testimony
11 that you called them in because it was time; right?

12 A. When I -- when he went to the floor
13 unconscious, I turned to wave them in. They were
14 already up and coming. But that was what I was
15 supposed to be doing.

16 Q. So you waved them in so they could --

17 A. They were already up and coming, though.

18 Q. Let me finish my question.

19 A. Go ahead.

20 Q. At the point in time when Mr. Molina
21 became unconscious, isn't it true that you waved or
22 signaled to the Jerrys to come in?

23 A. Yes.

24 Q. So they could kill Molina?

25 A. Right. Stab him.

1 Q. Stab him?

2 A. Yes.

3 Q. With the shanks you made?

4 A. Yes.

5 Q. And sharpened?

6 A. Yes, sir.

7 Q. And made handles for?

8 A. Yes, sir.

9 Q. Gave to them?

10 A. Directed us to.

11 Q. So they could kill Molina?

12 A. Yes, sir.

13 Q. Let me back up just a little bit, because

14 I want to talk about the point in time where you

15 signaled to Mr. Martinez. And I think in your

16 direct testimony with Ms. Armijo, you said you heard

17 a noise. And the next thing you know, Mr. Martinez

18 is choking Javier Molina; right?

19 A. Right.

20 Q. And he eventually chokes him to

21 unconsciousness; correct?

22 A. Yes, sir.

23 Q. Is it like getting him on the sides of the

24 neck and putting him to sleep?

25 A. Exactly what it is.

1 Q. I think you testified that at one point
2 Mr. Molina was struggling and fighting?

3 A. No, he was not struggling and fighting.

4 Q. He raised his arms up?

5 A. He went to raise his arms up. Not as you
6 did, but yes, he went to raise his arms up.

7 Q. How did he raise his arms up?

8 A. He went to grab his hand -- the arm that
9 was wrapped around his neck.

10 Q. Oh, I understand. He was grabbing Mr.
11 Martinez' arm --

12 A. Exactly.

13 Q. -- trying to save himself.

14 And you pulled his arms down; right?

15 A. I grabbed him by the wrists and pulled his
16 arms down.

17 Q. You pulled Mr. Molina's arms down?

18 A. Yes, I did.

19 Q. So Mr. Martinez could do what he needed to
20 do?

21 A. So he wouldn't get any DNA of Timothy
22 Martinez' on his fingers.

23 Q. And if Mr. Molina got Mr. Martinez' arm
24 away, he might have been able to fight; right?

25 A. I would have probably got killed because

1 of the situation; I didn't do my part.

2 Q. I just want to understand. When
3 Mr. Molina was reaching for Mr. Martinez's arms, he
4 was trying to stop Mr. Martinez from choking him.

5 A. Yes.

6 Q. And you stopped Mr. Molina from doing
7 that.

8 A. I did.

9 Q. You held his arms down until he went
10 unconscious.

11 A. Yes, sir.

12 Q. So that the Jerrys could come and kill
13 him.

14 A. Exactly.

15 Q. Thank you. Okay. Let's continue rolling
16 with the tape.

17 (Tape played.)

18 Q. Let's pause it here. Mr. Rodriguez, I've
19 paused it at 17:20:25:390. Yes?

20 A. Yes.

21 Q. Mr. Martinez is right there. I just
22 circled him. He's in the middle upper tier, just to
23 the left of where it says 1-A B; is that right?

24 A. Oh, yes.

25 Q. That's Mr. Martinez?

1 A. Mr. Martinez.

2 Q. He left after the Jerrys came in and
3 started stabbing him; correct?

4 A. Yes, he did.

5 Q. But you stayed in there.

6 A. Yeah, I stayed in there. I turned around
7 to get the photo album.

8 Q. And you actually got up on the bunk in
9 Mr. Molina's room so that the Jerrys, Jerry Montoya
10 and Jerry Armenta, could do the stabbing; right?

11 A. No.

12 Q. You never got up on the bunk?

13 A. I got up against the bunk.

14 Q. Against the bunk?

15 A. With my calves. My calves are up against
16 the bunk.

17 Q. So like backed up?

18 A. Right.

19 Q. And you stayed in there?

20 A. And I stayed in there.

21 Q. And watched them stab him?

22 A. No.

23 Q. You didn't watch?

24 A. No. When they came in, I backed up with
25 my calves against the bunk. Jerry Montoya got on

1 him. Armenta came around him. I grabbed the
2 syringe and the spoon with the Suboxone. And right
3 there where you see me go back in, I'm grabbing a
4 photo album.

5 Q. And so you got the spoon and the Suboxone.
6 That's the drugs.

7 A. Spoon and Suboxone and syringe.

8 Q. And the syringe.

9 A. Yes, sir.

10 Q. And you took those?

11 A. Yes, sir.

12 Q. And you got a photo album of naked
13 pictures?

14 A. Yes, sir.

15 Q. You took those, too?

16 A. Timothy Martinez' photo album.

17 Q. Did you give that back to Mr. Martinez?

18 A. I took it to my room, and it was
19 confiscated.

20 Q. What about the syringe and Suboxone and
21 spoon?

22 A. The syringe I put in my sock, and the
23 Suboxone, if you see the picture from the top
24 shower, there will be a state-issued spoon. That
25 was a spoon to Suboxone. The Suboxone was lost in

1 the tier somewhere.

2 Q. It was lost in the tier?

3 A. Yeah, it was somewhere on the tier.

4 Because when I finished putting the weapon away in
5 the shower drain, I looked to the spoon, the
6 Suboxone was missing.

7 Q. Do you agree with me, when you testified
8 on direct, you testified that Jerry Montoya stabbed
9 Mr. Molina in the chest?

10 A. Right.

11 Q. So you saw that happen?

12 A. I saw that happen, yes.

13 Q. And you saw that happen while you were in
14 the cell?

15 A. When I leaned over to grab it, he was
16 already, like, in my peripheral right here. So I
17 leaned over. He was on top of him, stabbing him. I
18 did see him stabbing like two or three times. I
19 heard it.

20 Q. You heard it and you saw it?

21 A. I heard and I saw it.

22 Q. You didn't leave when Mr. Martinez left?

23 A. No.

24 Q. Let's keep rolling.

25 (Tape played.)

1 A. I'm grabbing the photo album.

2 Q. Let's pause it right here. Just a little
3 further. There we go. So Mr. Rodriguez, I've
4 paused it at 17:20:44:390; correct?

5 A. Correct.

6 Q. And I'm going to circle an individual who
7 is on the top tier, leaning over the top rail on the
8 left-hand side of the image; correct?

9 A. Correct. That's me.

10 Q. That's you?

11 A. Yes, sir.

12 Q. Now, you've turned around, stopped, put
13 your arm up on the rail, and you're looking into
14 Mr. Molina's cell, aren't you?

15 A. Yes, sir.

16 Q. And while you're looking in there, Mr.
17 Armijo and Mr. Montoya are stabbing Mr. Molina to
18 death?

19 A. No, sir.

20 Q. What's going on at this point?

21 A. Well, you see, when I'm coming out of the
22 cell, and you see them standing in the door frame,
23 he's already up. He's already standing up. Right
24 now they're standing to the door, and he's standing
25 in the back of the room. And they're telling him to

1 stay back.

2 Q. Oh, that's right.

3 A. Yeah, he's already up by now.

4 Q. And you testified, didn't you, on direct
5 that Mr. Montoya essentially tried to give you his
6 shank; right?

7 A. No.

8 Q. You said, "No, get him"?

9 A. I said, "Don't let him out of the room."

10 Q. "Don't let him out of the room," right?
11 You wanted them to keep him in there and kill him?

12 A. That's what the plan was.

13 Q. That's what you wanted to have happen;
14 right?

15 A. That's what the plan was.

16 Q. My question to you, sir, is: Did you want
17 that to happen?

18 A. Yeah, that's the plan. Of course.

19 Q. So the answer is yes?

20 A. Yes.

21 Q. And then I think, as we saw from the
22 video, Mr. Molina walks by, turns around, and as
23 he's going down the stairs says, "Okay, you've got
24 me, carnal"?

25 A. "All right. You got me, carnals."

1 Q. And you told him, "You're no carnal"?

2 A. "You're not our carnal. You're no
3 carnal."

4 Q. Because you wanted him dead.

5 A. Well, that's the plan. If you go to hit
6 someone in the SNM, you've got to kill them.

7 Q. You didn't try to stop Mr. Molina from
8 being killed, did you?

9 A. Why would I?

10 Q. Well, let's talk about that for a minute.
11 You just told Ms. Armijo that in the lead-up to your
12 trial, October 24, you decided you wanted to
13 cooperate and work for the Government; right?

14 A. Not work for the Government, no.

15 Q. Well, you're getting paid, aren't you?

16 A. If you call \$50 a month getting paid.

17 Q. Well, let's talk about this. You at least
18 agreed that you would testify for the Government;
19 right?

20 A. Yes, sir.

21 Q. And instead of going to trial on the Alex
22 Sosoya case, you decided to cooperate; right?

23 A. Yes, sir.

24 Q. And you testified that that puts your life
25 in danger?

1 A. Of course, yes.

2 Q. It does; right?

3 A. Yes, sir.

4 Q. The same as if you stopped the Molina hit
5 would put your life in danger; right?

6 A. Yes, sir.

7 Q. If you stopped the Molina hit, Molina
8 might get to live; right?

9 A. At this point in time?

10 Q. No, I mean, at some point in time before
11 he's stabbed in the heart.

12 A. Well, yeah.

13 Q. He might get to live; right?

14 A. Yeah.

15 Q. And maybe you could have stopped it; maybe
16 you couldn't have.

17 A. At that point in time, my mentality wasn't
18 there.

19 Q. I'm not asking about your mentality. I'm
20 talking about: You might have been able to stop
21 Molina from dying; right?

22 A. Of course.

23 Q. But your mentality before going to trial
24 in the Alex Sosoya trial changed; right?

25 A. It's been changing, but yes.

1 Q. And at the point when you were about to go
2 to trial and potentially face a very long sentence,
3 you decided to work for the Government.

4 A. Correct.

5 Q. Right?

6 A. Correct.

7 Q. And that's the point in time when you
8 decided to stop.

9 A. Stop what?

10 Q. Stop, I think as you described it, being a
11 gang member.

12 A. Yes, sir.

13 Q. You didn't make that decision before
14 Javier Molina got himself killed, did you?

15 A. It was in the process. But no, I did not.

16 Q. You could have?

17 A. Could have.

18 Q. But you didn't?

19 A. Didn't.

20 Q. And you know from the discovery, because
21 you were charged in this case, that the Government
22 had this video evidence against you; right?

23 A. Yes, I knew that.

24 Q. And as a matter of fact, before the
25 federal government indicted you and charged you with

1 Mr. Molina's murder, you were charged in state
2 court; right?

3 A. Right.

4 Q. But you were only charged with tampering
5 with evidence; is that right?

6 A. Tampering with evidence, conspiracy to
7 tamper, and possession of a weapon.

8 Q. So tampering with evidence is hiding the
9 shank; right?

10 A. Right.

11 Q. And the conspiracy to tamper was related
12 to that; correct?

13 A. Yes.

14 Q. Then I think possession of the weapon is
15 because you possessed the shanks.

16 A. Of course, yes.

17 Q. And so those charges, you would agree with
18 me, didn't carry the same kind of punishment or
19 sentence that the federal charges for the murder of
20 Javier Molina carried?

21 A. No.

22 Q. And I think you testified that the state
23 charges got dismissed when the federal charges came
24 in?

25 A. They were about to get them amended to

1 first-degree murder before the feds investigated it.

2 Q. So you were going to get charged with
3 first-degree murder?

4 A. I was going to get charged with
5 first-degree murder.

6 Q. Do you know what the punishment is for
7 first-degree murder?

8 A. It's life.

9 Q. In state court?

10 A. I don't know. I assume it's life.

11 Q. You assume that it's life?

12 A. Right.

13 Q. And the feds came and they charged you?

14 A. Right.

15 Q. And you were able to then get access to
16 all this discovery on a tablet?

17 A. Yes.

18 Q. And see the case that they had against
19 you; right?

20 A. Yes.

21 Q. You saw this video that we're looking at;
22 right?

23 A. Yes.

24 Q. You also saw some photographic evidence?
25 Did you see some of the photographic evidence that

1 the Government had, Mr. Rodriguez?

2 A. Of what?

3 Q. Of evidence in the Javier Molina murder
4 case.

5 A. Yes, I seen it long before the feds picked
6 it up, I guess.

7 Q. So let me show you Government's Exhibit
8 74. Have you seen this picture before, Mr.
9 Rodriguez?

10 A. In my state case, yes.

11 Q. You've seen it on the tablet in the
12 federal case?

13 A. Yes.

14 Q. That's a picture of your pants in the
15 sink; correct?

16 A. Yes, they are.

17 Q. So I think you testified about this on
18 direct. You got back into your room and you
19 realized that you had blood on your pants?

20 A. Right, on my right leg.

21 Q. Javier Molina's blood?

22 A. Javier Molina's blood, off the shank.

23 Q. So you put your pants into the sink and
24 tried to clean them?

25 A. I did.

1 Q. But that's where the State Police
2 investigators found your pants after you got cleared
3 out of the pod; right?

4 A. Right.

5 Q. And they found that and, in fact, you
6 learned from the discovery that there was blood on
7 those pants; right?

8 A. No, there was no DNA found on my pants.

9 Q. So there wasn't any DNA found on your
10 pants?

11 A. No, sir.

12 Q. There was DNA found in your room.

13 A. No, sir.

14 Q. Where was the DNA found?

15 A. Outside of my room, on the tier in front
16 of my cell.

17 Q. Okay. That's right.

18 A. One drop of blood.

19 Q. So there was the drop of blood in front of
20 your cell; correct?

21 A. Yes, sir.

22 Q. And I think you testified you tried to
23 wash up?

24 A. I did.

25 Q. But they found DNA?

1 A. No, they didn't find no DNA.

2 Q. I think you just said there was some DNA.

3 A. There was DNA outside my cell on the tier.

4 And I threw hand sanitizer and water out on the
5 tier. There's pictures in the discovery.

6 Q. I see. And that's where the DNA was
7 found?

8 A. Yes.

9 Q. The DNA of Javier Molina?

10 A. Yes.

11 Q. You knew that?

12 A. I didn't know whose blood it was. I just
13 knew it was blood.

14 Q. Well, you knew by the time you got the
15 discovery that the Government had that evidence
16 against you.

17 A. No, there was no blood out there. They
18 didn't pull DNA off it. They alleged that I was
19 covering blood up. They never found it.

20 Q. I see. I understand. That was right
21 outside your cell --

22 A. Right.

23 Q. -- cell 111?

24 A. What happened was, they came through with
25 the flashlight. Someone seen it. And before they

1 could take pictures of it, I threw hand sanitizer
2 and water on it.

3 Q. I see. So they find your sweats in the
4 sink?

5 A. My greens.

6 Q. Sorry, your greens in the sink, after the
7 murder?

8 A. Right.

9 Q. And then let's look at Government's 76.

10 A. With no DNA on it.

11 Q. I understand. Because you washed the
12 blood off.

13 A. Washed the blood off.

14 Q. So let's look at Government's 76. Have
15 you seen that picture before?

16 A. I have.

17 Q. That's a picture of the toilet in your
18 room?

19 A. Toilet in my room.

20 Q. With Saran Wrap in there?

21 A. The Saran Wrap is in there.

22 Q. And you knew that the Government had this
23 evidence in the case against you; correct?

24 A. What evidence is it?

25 Q. Well, it's a photograph of the toilet in

1 your room; right?

2 A. Right.

3 Q. Okay. And I think you testified about
4 where that came from, didn't you?

5 A. Why I threw it away or where it came from?
6 In my cell is where it came from.

7 Q. So on your direct testimony with
8 Ms. Armijo, you testified that that was Saran Wrap
9 from the shanks; correct?

10 A. No.

11 Q. I'm sorry, from Mr. Molina's shank?

12 A. No.

13 Q. Where did that Saran Wrap come from?

14 A. The Saran Wrap was in my room. It's
15 something that we all keep. It's from the sack
16 lunches. That Saran Wrap, I attempted to wrap up
17 the shank that Timothy Martinez gave me that was
18 Javier Molina's.

19 Q. That's right.

20 A. When I bent it on the bunk, I bent it on
21 the desk into, like, a U. I attempted to wrap it
22 up, but I was a little nervous and I couldn't get it
23 wrapped right, so I just threw it in the toilet.
24 And those toilets are stop-flushes, so when you
25 flush it more than twice back-to-back, they don't

1 flush anymore. That's why it's in the toilet.

2 Q. I got it. So after the Javier Molina
3 murder, they see the Saran Wrap in your toilet?

4 A. They assumed that it was from a weapon
5 that I was trying to get rid of in my room.

6 Q. So let me talk to you a little bit about
7 that. You said that Timothy Martinez gave you
8 Mr. Molina's shank?

9 A. Exactly.

10 Q. And he had gotten it from Mr. Molina
11 earlier; correct?

12 A. From what I understand, yes. That's the
13 only place he could have got it from.

14 Q. Well, he told you that's how he got it,
15 didn't he?

16 A. Yes.

17 Q. Told you that Mr. Molina had given it to
18 him?

19 A. He didn't tell me who gave it to him or
20 nothing. I just assumed that he went to his room
21 and took it. I didn't ask him where he got it from
22 and how he got it. I just got the bag and took off.

23 Q. And you took the shank into your room --

24 A. Right.

25 Q. -- and bent it into half?

1 A. No.

2 Q. Tell me what you did with it.

3 A. I put it in my sock.

4 Q. Put it in your sock.

5 A. Right.

6 Q. At some point you tried to wrap
7 Mr. Molina's shank with Saran Wrap; right?

8 A. At some point in time, yes.

9 Q. Tell me about that. Didn't you try to
10 bend it?

11 A. I told you I bent it.

12 Q. Okay. That's what I'm trying to
13 understand.

14 A. Okay. This is what happened. After the
15 Molina murder went down, I remembered I had a
16 syringe in my sock. So when I went down to get it,
17 I seen that I had blood on my greens. I took off my
18 greens. And when I was going to go wash them, I
19 snapped that I had Javier Molina's weapon. I pulled
20 it out of my sock. I cut the handle off. I bent
21 it, I attempted to wrap it up -- this is after the
22 Molina -- this is after they see the drop of blood
23 outside my house. This is, if you see the video
24 when I go to my room, when all the COs come in, this
25 is when they're at my door taking pictures, and I've

1 got the towel up.

2 Q. What kind of shank was it that Mr. Molina
3 had?

4 A. It was about a five-and-a-half, six-inch
5 screw to -- you know the screw that goes in
6 crutches?

7 Q. Yes, sir.

8 A. It's one of those screws.

9 Q. And you were able to bend that screw?

10 A. Yes, sir.

11 Q. Wrap it in Saran Wrap?

12 A. I didn't wrap it in Saran Wrap. That's
13 the Saran Wrap right there.

14 Q. I understand. So what did you do with the
15 shank after you bent it?

16 A. I keistered it.

17 Q. Did you put it in anything before you
18 keistered it?

19 A. No.

20 Q. And "keistering" means you put it in your
21 rectum; right?

22 A. Right.

23 Q. So you took it, put it in your rectum to
24 hide it; correct?

25 A. I did.

1 Q. And then you said you took it with you to
2 PNM, to Santa Fe; right?

3 A. Yes, sir.

4 Q. So was that, like, a souvenir?

5 A. No. It's hard to get weapons in Santa Fe.
6 When you're coming back out, you're coming out
7 without a weapon. So when you come back out you
8 have to -- it's mandatory you have weapons,
9 something I don't have to go looking for later.

10 Q. Did that screw come from the wheelchair
11 program?

12 A. No, it came from crutches, like I told you
13 before.

14 Q. From crutches.

15 A. Yes.

16 Q. Got it. So that shank stayed in your
17 rectum all the way from Southern New Mexico
18 Correctional Facility up to Santa Fe?

19 A. No.

20 Q. How long did it stay in there?

21 A. Well, they housed us in 2-A. I took it
22 out, washed up. The morning before they came for
23 us, I put it away and took it with me on transport.

24 Q. Where did you put it away?

25 A. The same place, my rectum.

1 Q. Okay.

2 A. And then I took it on transport and went
3 to Santa Fe. And I got up and took it out there.

4 Q. How many people did you use that shank on?

5 A. I threw it away.

6 Q. It's gone?

7 A. Yes, it's gone.

8 Q. Where did you throw it?

9 A. In the toilet. I flushed it in cell 3, in
10 R pod, in 3-A.

11 Q. So before you decided on October 24 to
12 cooperate with the Government, you knew about the
13 evidence we've talked about; right? I'm not talking
14 about the shank that you keistered, but some of
15 these photographs; correct?

16 A. Yes.

17 Q. Then you knew about the video; right?

18 A. I did.

19 Q. You knew that the Government had
20 identified Jerry Armenta and Jerry Montoya as the
21 people on the video who were stabbing Javier Molina?

22 A. Yes.

23 Q. You knew that the Government had
24 identified Timothy Martinez and had charged him --
25 at least the federal government had charged him with

1 the murder of Javier Molina; correct?

2 A. Yes.

3 Q. And before you decided to work for the
4 Government, you knew that Jerry Montoya was going to
5 testify against you, didn't you?

6 A. Yes.

7 Q. And you knew that Jerry Armenta was going
8 to testify against you, didn't you?

9 A. Yes.

10 Q. You knew that Timothy Martinez was going
11 to testify against you, didn't you?

12 A. Yes, sir.

13 Q. You knew all that before you made the
14 decision to join these guys.

15 A. Yes, sir.

16 Q. I think, as you told Ms. Armijo on your
17 direct, in the Sosoya case you were charged with
18 other defendants; correct?

19 A. In the Sosoya case?

20 Q. You were charged with Robert Martinez?

21 A. Yes, sir.

22 Q. Were you charged with anybody else?

23 A. No.

24 Q. You knew that Robert Martinez was
25 cooperating against you?

1 A. Yes, sir.

2 Q. You also knew, at least with respect to
3 Mr. Sosoya, there was quite a number of witnesses to
4 the attack on Mr. Sosoya; correct?

5 A. No, sir.

6 Q. Well, let's talk a little bit about that.
7 I think you said that you agreed to help Robert
8 Martinez to hit Alex Sosoya; right?

9 A. Yes, sir.

10 Q. And one of the reasons you did that, I
11 think you said, was to show loyalty to the SNM;
12 correct?

13 A. Yes, sir.

14 Q. And Mr. Martinez, at the time, was,
15 according to you, on the tabla of the SNM; right?

16 A. Who?

17 Q. Robert Martinez was on the tabla?

18 A. Yes.

19 Q. And you wanted to be on the tabla, didn't
20 you?

21 A. On the tablet?

22 Q. The tabla.

23 A. Oh, on the tabla.

24 Q. Yes, sir. I'm sorry.

25 A. I was far away from being on the tabla at

1 that time.

2 Q. But you aspired to be on the tabla?

3 A. I aspired to be a good SNM soldier.

4 Q. Did you or did you not aspire to be on the
5 tabla?

6 A. No, I did not.

7 Q. Never?

8 A. No.

9 Q. So you never said you wanted to be on the
10 tabla?

11 A. No. That's something you do not express.
12 Your brothers express that for you.

13 MR. VILLA: May I approach, Your Honor?

14 THE COURT: You may.

15 BY MR. VILLA:

16 Q. Mr. Rodriguez, do you remember the October
17 24, 2017, report?

18 A. Yes, sir.

19 Q. Written by Agent Stemo?

20 A. Yes, sir.

21 Q. And I'm showing you on page 31650, Bates
22 page, page 2 of the report; right?

23 A. Yes, sir.

24 Q. There is a section about the Alex Sosoya,
25 Chulo, assault?

1 A. Right.

2 Q. And it says down here, "Rodriguez aspired
3 to be on the tabla in the future"?

4 A. That's incorrect. I think that's a
5 misunderstanding there.

6 Q. So you're saying that Agent Nancy Stemo of
7 the FBI misunderstood you?

8 A. I think it was a misunderstanding.

9 Q. So when she wrote this down, she wrote
10 something down wrong?

11 A. I think I remember when -- expressing it
12 was that they asked me, "Why did you help him?"

13 And I said, "It's because he was on the
14 tabla, and someday, if you're on it, you don't want
15 no one speaking against you."

16 So I think that maybe got that aspirations
17 confused with my words.

18 Q. You never wanted to be a leader, a
19 llavero?

20 A. No.

21 Q. A llavero is somebody who is --

22 A. Eventually, if you're putting in the
23 work --

24 Q. Let me finish my question, sir, please. A
25 llavero is somebody who is going to be running a

1 pod, or a leader; right?

2 A. Right.

3 Q. Llaverro is like a key-holder.

4 A. Right.

5 Q. It's your testimony you didn't want to be
6 a leader like that?

7 A. Well, I'm too young for that.

8 Q. I mean ever.

9 A. Someday, yeah, that's what you put in the
10 work for.

11 Q. So you did aspire to be a leader?

12 A. That's why I was such a good carnal. And
13 you want your brothers to someday trust in you that
14 you could lead them.

15 Q. So part of helping out somebody on the
16 tabla is to one day show that you can be a leader,
17 too; right?

18 A. It's to show that if you help someone out
19 on the tabla, you have someone's voice who is heard,
20 someone who, next time you get into political
21 battle, you're going to have someone who could speak
22 to those leaders and help you out. So that's what
23 that was for. At that time, that was my first
24 initial actual hit for the SNM. So you can't aspire
25 to be something with one hit on your belt.

1 Q. And I'm not saying you did the Alex Sosoya
2 hit because you wanted to be a leader --

3 A. Right.

4 Q. -- but I want to clarify for this jury
5 that you did want to be a leader at some point.

6 A. Yeah. If you put in the work, yeah, some
7 day.

8 Q. So when Agent Stemo wrote that you aspired
9 to be a leader in the future, she wasn't wrong?

10 A. Well, I didn't say that in that interview.

11 Q. Okay. So the whole hit -- the whole issue
12 on Alex Sosoya, between Mr. Sosoya and Robert
13 Martinez, had to do with not returning a game of
14 cards and some bad drugs, or something like that;
15 isn't that true?

16 A. A game of cards?

17 Q. Sorry. A deck of cards.

18 A. I never heard that.

19 Q. Oh, I'm getting my wires crossed. It was
20 over an unreturned cassette player.

21 A. It was over a cassette player and some
22 drugs he didn't want to pay for. And the hit was
23 initially called by Arturo Garcia later on.

24 Q. So Sosoya and Martinez had a dispute about
25 a cassette player and some drugs.

1 A. It wasn't an open -- it wasn't an open
2 argument. It was that I lent him my cassette
3 player, he broke it, and he didn't want to pay me
4 back. Sosoya is complaining.

5 And Robert Martinez is complaining that a
6 Burqueno, a rival gang, sold him a small amount of
7 drugs for a high price. And Alex Sosoya took the
8 Burqueno side. And it started people gossiping
9 about it with one another, and it turned into Carlos
10 Herrera going and telling Baby Rob and Arturo Garcia
11 that Alex Sosoya --

12 MS. BHALLA: Objection, hearsay.

13 THE COURT: Are you trying to elicit this?

14 MR. VILLA: No, Your Honor, I'm not. I
15 think the question --

16 THE COURT: Why don't you ask another
17 question?

18 MR. VILLA: -- the question has been
19 answered, Your Honor.

20 BY MR. VILLA:

21 Q. So in any case, you agreed to help do the
22 hit of Mr. Sosoya?

23 A. Yes, sir.

24 Q. And I think you said that the plan was to
25 get Sosoya out to the yard and get him tired; right?

1 A. Tired, yes.

2 Q. Make him tired, play basketball, or do
3 something to get him --

4 A. That's what Robert Martinez wanted.

5 Q. But you didn't wait for that, did you?

6 A. I thought it was kind of weak.

7 Q. So you went for it right away?

8 A. Yes.

9 Q. And you stabbed him in the neck?

10 A. Right.

11 Q. With a shank that you had made?

12 A. Yes, sir.

13 Q. And I think, in the course of the
14 struggle, at some point you get Mr. Rodriguez (sic)
15 onto the ground; right? Mr. Sosoya onto the ground.
16 I apologize.

17 A. Yes, sir.

18 Q. Right?

19 A. Yes, sir.

20 Q. And I think you testified that the guards
21 start shooting rubber bullets and tear gas and other
22 things; right?

23 A. Yes, sir.

24 Q. So the guards are seeing this happen?

25 A. Yes, sir.

1 Q. That's why they're shooting?

2 A. Yes.

3 Q. So they're witnessing what's going on?

4 A. Yes, sir.

5 Q. Right. And after -- I think you said
6 early on in the assault, Mr. Martinez got hit in the
7 head with a tear gas canister; right?

8 A. Not early on, but towards the end of it,
9 yes.

10 Q. So he was out of it, and you were fighting
11 Sosoya one-on-one?

12 A. It was, like, maybe the last couple
13 minutes of it.

14 Q. So the last couple minutes of the fight,
15 it's just the two of you; right?

16 A. Yes, sir.

17 Q. And during that last couple minutes of the
18 fight, I believe you tried to gouge Mr. Sosoya's
19 eyes out?

20 A. Yes, sir.

21 Q. And you bit his ear off?

22 A. Yes, sir.

23 Q. Is biting some people's ears off something
24 you do a lot?

25 A. It's happened before.

1 Q. How many times?

2 A. Once before.

3 Q. Would you consider that your signature
4 move?

5 A. No.

6 Q. Okay. But others in the SNM might?

7 A. It's something that happens. It's
8 something they do. If that's what they told you.

9 Q. And that -- all that happens in yard, in
10 view of these COs who are shooting at you, trying to
11 get you to stop?

12 A. Yes, sir.

13 Q. And Robert Martinez, as you testified, was
14 going to testify against you?

15 A. I believe so, yes.

16 Q. Okay. So we've got more than one witness
17 who was going to testify about what happened in that
18 fight; right?

19 A. Yes, sir.

20 Q. And it's right before that trial that I
21 think you started your cooperation?

22 A. Yes, sir.

23 Q. Now, isn't it true that before you started
24 that cooperation, you had made plans, didn't you, to
25 try to attack some of the defendants in this case?

1 A. Yes, sir.

2 Q. You were going to try to attack them in
3 court; right?

4 A. One individual, yes.

5 Q. You were going to bring shanks to court
6 and try to attack that individual?

7 A. I did bring them to court.

8 Q. And as a matter of fact, you brought those
9 shanks when you came to talk to the FBI; right?

10 A. I take shanks everywhere, when I was
11 active.

12 Q. You took shanks to talk to the FBI, and
13 turned them over to the FBI, didn't you?

14 A. Yeah.

15 Q. I think you testified you took shanks
16 everywhere when you were active?

17 A. When I was an active SNM member, I took
18 shanks everywhere.

19 Q. And you took them by keistering; right?

20 A. Yes, sir.

21 Q. Putting them in your rectum?

22 A. Yes, sir.

23 Q. So you're saying you don't do that
24 anymore?

25 A. Do not do that no more.

1 Q. You don't have any shanks in your rectum
2 right now?

3 A. Want to take me to an X-ray machine?

4 Q. Not really.

5 A. Well, then --

6 Q. But you did have them the day you went to
7 talk to the FBI and ultimately worked for the
8 Government; right?

9 A. I just told you, yes.

10 Q. And you took those shanks out of your
11 rectum and turned them over to the Government?

12 A. I did.

13 Q. And told them about your plan to kill one
14 of the defendants in this case?

15 A. I was going to attempt to kill one of the
16 defendants, yes.

17 Q. All right. I'm going to show you some
18 photographs, Mr. Rodriguez.

19 MR. VILLA: May I approach?

20 THE COURT: You may.

21 BY MR. VILLA:

22 Q. Mr. Rodriguez, I'm showing you what's
23 marked as Defendants' EV. Have you seen this
24 before?

25 A. Yes, sir.

1 Q. It's a photograph of the shank that you
2 had keistered when you went to talk to the FBI?

3 A. Two shanks.

4 Q. Okay. There's two shanks in this
5 photograph.

6 A. Yes, sir.

7 Q. And does this look the same --

8 A. It's the same exact one.

9 MR. VILLA: Your Honor, move to admit EV.

10 THE COURT: Any objection?

11 MS. ARMIJO: No, Your Honor.

12 THE COURT: Any other defendant have any
13 objection? Defendants' EV will be admitted into
14 evidence.

15 (Defendants' Exhibit EV admitted.)

16 MR. VILLA: May I publish?

17 THE COURT: You may.

18 BY MR. VILLA:

19 Q. Mr. Rodriguez, that's Defendants' EV that
20 I just showed you; is that right?

21 A. The what?

22 Q. This is Defendants' Exhibit EV that I just
23 showed you?

24 A. Yes, sir.

25 Q. And this object that I've just circled

1 right in the middle looks like it has a round top.

2 That's two shanks wrapped together; right?

3 A. Yes, sir. One with the handle and one
4 just bare.

5 Q. In Saran Wrap?

6 A. In Saran Wrap in a toothpaste sheath, so I
7 could pull it out.

8 MR. VILLA: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MR. VILLA:

11 Q. I'm going to show you Defendants' EW and
12 EX. Are those pictures of the shanks now taken out
13 of the toothpaste?

14 A. Those are them. Just one out of the
15 toothpaste. The other one was on top of the
16 toothpaste. So when I pull it out, the other one
17 can stay in.

18 Q. I understand. These pictures look the
19 same or substantially the same?

20 A. The same ones.

21 MR. VILLA: Your Honor, I move to admit EW
22 and EX.

23 THE COURT: Any objection?

24 MS. ARMIJO: No, Your Honor.

25 THE COURT: Any objection from the

1 defendants? Not hearing any, Defendants' Exhibits
2 EW and EX will be admitted into evidence.

3 (Defendants' Exhibits EW and EX admitted.)

4 MR. VILLA: May I publish?

5 THE COURT: You may.

6 BY MR. VILLA:

7 Q. Mr. Rodriguez, I'm showing you what's been
8 admitted as EX; correct?

9 A. Yes, sir.

10 Q. Those are the two shanks that you had in
11 your rectum when you came to talk to the FBI?

12 A. Those are them.

13 Q. How did you make those shanks?

14 A. I took a piece off the TV while I was in
15 Chaparral, New Mexico, in the Otero County Prison
16 Facility. It was a piece that was on a flat screen,
17 that keeps the flat screen stable. I took them off,
18 broke them down with a stool on my desk, and
19 proceeded to sharpen one of them and kept the other
20 one just as it was.

21 Q. Did you ever get to use this shank on
22 anybody?

23 A. No.

24 Q. Either one of them?

25 A. No.

1 Q. And just so we see what EW is, it's just
2 another picture of the same two shanks; correct?

3 A. Yes, sir.

4 Q. So your plan, at least before you decided
5 to cooperate for the Government right before your
6 Alex Sosoya trial was going to start, was to use
7 those shanks on one of the defendants in this case?

8 A. The defendant in my Sosoya indictment, not
9 this case.

10 Q. Okay. But the defendants being SNM
11 members?

12 A. Yes, sir.

13 Q. And you at that time, the time you decided
14 to cooperate with the Government, you weren't
15 particularly happy with the SNM, were you?

16 A. No, I was not.

17 Q. You were upset?

18 A. I was very upset with SNM.

19 Q. One of the reasons you were upset, were
20 you not, was that because of your criminal history,
21 you might not ever be a leader for the SNM?

22 A. No.

23 Q. That wasn't one of the reasons?

24 A. No.

25 Q. That was never a problem?

1 A. It's never been a problem.

2 Q. No one has ever questioned you about that?

3 A. No.

4 Q. So if Mr. Urquizo testified that there
5 were questions about your criminal history, that's
6 wrong?

7 A. It's never come to my attention. Maybe it
8 was behind my back, but never to my attention.

9 Q. Let me show you, Mr. Rodriguez,
10 Government's 238. Do you remember that?

11 A. Pen pack?

12 Q. Yes, sir.

13 A. Yes, sir.

14 Q. I'm flipping to -- do we have this on the
15 computer? I'm flipping to 8782, but I'm going to
16 show it to you on the computer.

17 And let's go to 8782. I think. Mr.
18 Rodriguez, you've been convicted in Counts 3, 4, and
19 5 of criminal sexual penetration, have you not?

20 A. Three and four.

21 Q. So you're not convicted anymore of Count
22 5?

23 A. No, sir.

24 Q. So let's focus, then, on Counts 3 and 4.

25 A. Yes, sir.

1 Q. Criminal sexual penetration is New
2 Mexico's rape law; right?

3 A. Yes, sir.

4 Q. I think you testified that as part of the
5 SNM, they don't allow child molesters; right?

6 A. Yes, sir.

7 Q. And also rapists?

8 A. Sex offenders, yes.

9 Q. You're a sex offender, aren't you?

10 A. No, sir.

11 Q. You don't have to register as a sex
12 offender?

13 A. Not that I'm aware of.

14 Q. So you're testifying that when you get out
15 of prison, you don't have to register as a sex
16 offender?

17 A. I don't know. I don't see it as against a
18 woman or child, so I wouldn't see why not. Why?

19 Q. It's a pretty bright-line rule that if
20 you're a sex offender, you can't be in the SNM;
21 right?

22 A. That's the thing. You're misunderstanding
23 the SNM and these charges.

24 Q. So I just want to -- first of all, I want
25 to clarify. You don't know whether you're a sex

1 offender or not?

2 A. I'm not.

3 Q. You're saying you don't have to register
4 as a sex offender --

5 A. No, sir.

6 Q. -- when you get out of prison?

7 A. No, sir.

8 Q. Even though you've been convicted of
9 criminal sexual penetration in the third degree?

10 A. That's correct.

11 Q. And this crime occurred before you were
12 ever part of the SNM; correct?

13 A. Yes, sir.

14 Q. So that's something that, if members of
15 the SNM thought you were a sex offender, could be a
16 problem for you; right?

17 A. Of course.

18 Q. It could be a problem for you in prison
19 anyway?

20 A. Yes.

21 Q. Whether you're in SNM or not; right?

22 A. Yes, sir.

23 Q. And if you went and got convicted in the
24 Alex Sosoya case, or got convicted in the Javier
25 Molina trial, you might have to go to prison for the

1 rest of your life?

2 A. Yes, sir.

3 Q. And walk around with these charges; right?

4 A. These were already out in the open.

5 Everyone knew about these.

6 Q. Well, these aren't necessarily out in the
7 open in federal prison; right?

8 A. People are getting raped in prison all the
9 time.

10 Q. But the question I have for you, Mr.
11 Rodriguez, is: If you got convicted by the federal
12 government --

13 A. Right.

14 Q. -- if you'd gone the trial and got
15 convicted --

16 A. Right.

17 Q. -- you go to federal prison; right?

18 A. Yes, sir.

19 Q. And just like in state prison, being a sex
20 offender can be a problem?

21 A. Yes, sir.

22 Q. And that could be a problem for you?

23 A. No, sir.

24 Q. Somebody could come and ask you for your
25 paperwork?

1 A. And guess what?

2 Q. Well, let me ask the questions. Okay, Mr.
3 Rodriguez?

4 A. Yes, sir.

5 Q. But if you work for the Government, you
6 might get a little more control over how much time
7 you do; right?

8 A. Right.

9 Q. And where you do your time?

10 A. Right.

11 Q. If you get convicted in the Sosoya case or
12 Javier Molina trial, you don't get that control, do
13 you?

14 A. No, sir.

15 Q. So let's talk a little bit about this.
16 You got convicted in Count 2 -- I'm just circling
17 here -- of kidnapping; right?

18 A. Yes, sir.

19 Q. And it says in here that defendant --
20 that's you, right, where it says "defendant"?

21 A. Yes, sir.

22 Q. That's referring to you?

23 A. It is.

24 Q. "Did intentionally, unlawfully take,
25 restrain, or confine John Hardy"; right?

1 A. Yes, sir.

2 Q. That's the victim in this case?

3 A. Victim in the case.

4 Q. Let me clear this out. And it says you
5 "restrained or confined John Hardy by force,
6 intimidation, or deception, with the intent to hold
7 John Hardy to service against his will, or to
8 inflict physical injury." Did I read that right?

9 A. No.

10 Q. I didn't read that right?

11 A. You skipped a sentence.

12 Q. Okay. Well, the part that I read out
13 loud, did I read that right?

14 A. Read it again.

15 Q. Okay. So I'm going to read the part
16 starting right here, "with the intent to hold John
17 Hardy to service against his will, or to inflict
18 physical injury or a sexual offense on John Hardy."

19 A. Yes, sir.

20 Q. I read that part right?

21 A. Yes, sir.

22 Q. That's what you got convicted of?

23 A. That's what I got convicted of. I pled no
24 contest to it.

25 Q. And it says, "To wit: John Hardy was held

1 in Jason Lucero's cell against his will, and
2 physical injury and sexual offenses were committed
3 upon John Hardy."

4 A. Yes, sir.

5 Q. Right?

6 A. Correct.

7 Q. By you?

8 A. No.

9 Q. Okay. Well, we'll talk about that in just
10 a minute.

11 Let's look at Count 3. That's criminal
12 sexual penetration in the third degree; correct?

13 A. That's it.

14 Q. And it says that the defendant -- that's
15 you; right?

16 A. That's me.

17 Q. "Did intentionally and unlawfully, by the
18 use of force or coercion or threats of force or
19 coercion, cause John Hardy to be penetrated to any
20 extent with a hot sauce bottle in his anal opening."
21 Right?

22 A. That's correct.

23 Q. Didn't say "aiding and abetting" in there,
24 did it?

25 A. No, it does not.

1 Q. It says that the defendant, you, did that?

2 A. Right.

3 Q. With a hot sauce bottle?

4 A. Right. That's what it says.

5 Q. And then I think Count 4 says you did the
6 same thing, this time with a lotion bottle; correct?

7 A. That's correct. That's what it says.

8 Q. And in your direct testimony with Ms.
9 Armijo, I think you testified that you didn't
10 remember that?

11 A. No, I don't remember that.

12 Q. You don't remember that?

13 A. I'm pretty sure it happened. But I don't
14 remember it.

15 Q. So you agree with me that Mr. Hardy did
16 have a lotion bottle put in his anal opening?

17 A. Yes.

18 Q. And that you were convicted of that?

19 A. I was.

20 Q. And you still stand convicted of that to
21 this day?

22 A. Yes, sir.

23 Q. But it's your testimony that you don't
24 exactly remember?

25 A. Remember what?

1 Q. Him being penetrated with a lotion bottle?

2 A. That was a long time ago. I don't really
3 recall everything. I know it was a bad case, and a
4 lot of bad stuff happened to the guy. But I don't
5 recall everything.

6 Q. Okay. I understand you don't recall. I
7 mean, that was, what, 2003?

8 A. That was a long time ago.

9 Q. That's a long time ago?

10 A. Right.

11 Q. But in 2013, you filed a habeas petition
12 for this case, didn't you?

13 A. I filed, I think, three habeases on this
14 case.

15 Q. Well, one of them you filed on, I believe,
16 May 2, 2013.

17 A. That's the most reason one, I think, yeah.

18 Q. That's most recent?

19 A. Right.

20 Q. The 2013 isn't quite as long ago, was it?

21 A. No.

22 Q. And you would agree with me that in that
23 habeas petition you admitted that you physically
24 assaulted John Hardy?

25 A. I did. I admitted to pretty much all the

1 counts in that case that I contributed to.

2 Q. You admitted that you made him snort Ajax?

3 A. I did.

4 Q. And drink urine?

5 A. I did.

6 Q. And that you "California" knocked him out?

7 A. Yes, sir.

8 Q. What's a California knockout?

9 A. A choke-out.

10 Q. So like what Mr. Martinez did to
11 Mr. Molina?

12 A. No, it's through the front, like you
13 demonstrated earlier.

14 Q. Like this?

15 A. Yes, sir.

16 Q. Okay. So you did that to him; right?

17 A. Yes, sir.

18 Q. And in your habeas petition, didn't you
19 state that inmates told Mr. Hardy to put a lotion
20 bottle in his rectum, and then you claim that he did
21 of his own free will?

22 A. I think that's Count 5.

23 Q. Did you claim that Mr. Hardy did that or
24 not?

25 A. Yeah. According to Count 5, yes, not

1 Count 4.

2 Q. Okay. But my question to you is: Did you
3 claim that Mr. Hardy did that in your habeas
4 petition?

5 A. Yes.

6 Q. So at least in 2013, you remembered
7 something about a lotion bottle?

8 A. Right.

9 Q. But you're saying you don't remember it
10 now?

11 A. Not Count 4.

12 Q. And as it stands today, you weren't
13 successful on this habeas petition; you're still
14 convicted of this sex offense?

15 A. Yes, sir. I didn't file in the federal
16 courts.

17 Q. But you don't think you're a sex offender?

18 A. No, sir.

19 Q. You don't think this is a problem for you
20 in the SNM?

21 A. Oh, it's not a problem at all.

22 Q. Now, you made a lot of claims with respect
23 to Mr. Molina trying to implicate Daniel Sanchez,
24 haven't you?

25 A. Not claims, no.

1 Q. Well, you made testimony here in court;
2 right?

3 A. Yes, testimony.

4 Q. And you said that Mr. Sanchez was a friend
5 of yours?

6 A. Was.

7 Q. Okay. And that you were, at least at one
8 point, loyal?

9 A. I was a very loyal person.

10 Q. But the things you're saying today --
11 that's not being very loyal, is it?

12 A. No.

13 Q. I'm sorry?

14 A. No, sir, not at all.

15 Q. Hard to trust somebody that's not loyal;
16 right?

17 A. Right.

18 Q. You would agree with that?

19 A. Yes, sir.

20 Q. Now, let me take you back to your plea
21 agreement in this case. And I believe that -- do we
22 have that? And Mr. Rodriguez, I'm going to go over
23 your plea agreement with you in just a minute. But
24 would you agree with me that the habeas petition in
25 your case against Mr. Hardy that you filed was for

1 ineffective assistance of counsel?

2 A. It was, yes.

3 Q. And you were saying that your attorney at
4 the time didn't advise you of something called
5 SORNA?

6 A. Right.

7 Q. And isn't SORNA the Sex Offender
8 Registration and Notification Act?

9 A. Yes, sir.

10 Q. It's the act that says that you have to
11 register as a sex offender?

12 A. That's what the SORNA says, yeah.

13 Q. Doesn't it say in your habeas petition
14 that you didn't know that you were going to have to
15 be -- to register?

16 A. My argument was that it wasn't in my J&S.

17 Q. And so you found out -- according to your
18 habeas petition, you found out from a CO that you
19 were going to have to register?

20 A. Right. That's what the allegation was. I
21 didn't know it at the time, so I went ahead and
22 started reading it. And I didn't feel that it was a
23 crime against anyone that requires that. So I was
24 saying that I wanted to pull my plea, and fight it.

25 Q. But you didn't get to pull your plea?

1 A. Didn't get to pull it, no.

2 Q. And you didn't win on the grounds that you
3 don't have to register?

4 A. I didn't win on the ineffective assistance
5 of counsel.

6 Q. But you raised ineffective assistance
7 because you said he didn't tell you --

8 A. Right.

9 Q. -- that you have to register?

10 A. Right.

11 Q. Which means you do have to register?

12 A. I guess. According to state law, I guess,
13 yeah.

14 Q. Register as a sex offender?

15 A. Right.

16 Q. So let me ask you about the state time
17 you're doing now. How much time do you have left?

18 A. I'm on in-house parole.

19 Q. What does that mean?

20 A. It means that I completed my prison
21 sentence, and now I'm on in-house parole.

22 Q. How much time do you have on in-house
23 parole?

24 A. Two years.

25 Q. So you get released in two years?

1 A. No.

2 Q. Well, for the charges that you're serving
3 time for.

4 A. Right.

5 Q. So other than your plea agreement, which
6 I'm going to talk to you about in a minute, for your
7 state case, you just have the two years of parole
8 left?

9 A. Oh, not counting the federal case.

10 Q. Not counting the federal case.

11 A. Right.

12 Q. Because you haven't been sentenced on the
13 federal case; right?

14 A. Yes.

15 Q. You don't get sentenced until after you
16 testify; right?

17 A. No, not after. After everyone is done
18 getting sentenced.

19 Q. Okay. So at some point in time, you're
20 going to get sentenced, but not yet?

21 A. Yes, sir.

22 Q. And you will be released from state
23 custody in about two years?

24 A. About maybe a year and a half.

25 Q. A year and a half and you're done?

1 A. I'm done.

2 Q. You don't have any other cases besides the
3 federal case?

4 A. I'm done.

5 Q. So setting the federal case aside, you can
6 be out in the community?

7 A. Right.

8 Q. Now, let me ask you about that plea
9 agreement, if we can pull that up. This is
10 Government's Exhibit 682, the plea agreement that
11 you entered in Mr. Sosoya's case, and the Javier
12 Molina case; correct?

13 A. Correct.

14 Q. And that's why there's two case numbers up
15 there for both cases?

16 A. Yes, sir.

17 Q. So the plea agreement took care of all of
18 the cases that you were fighting against the federal
19 government; right?

20 A. Yes, sir.

21 Q. And so other than the year and a half you
22 owe on parole, and whatever happens in this case,
23 that's all you've got on your plate; right?

24 A. That's it.

25 Q. And I think you testified on direct that

1 you're hoping for a reduced sentence; right?

2 A. Yes, sir.

3 Q. As a matter of fact, let me talk to you
4 about that. I think you said on direct that you
5 were just so happy to be out of the gang life that,
6 to be honest, it really just didn't matter.

7 A. Right.

8 Q. Okay. So let's talk about that. You pled
9 guilty to the murder of Javier Molina?

10 A. Right.

11 Q. Which is a life sentence?

12 A. Right.

13 Q. And it's mandatory life; you don't get out
14 except in a box?

15 A. Right.

16 Q. Unless you get a reduced sentence?

17 A. That's correct.

18 Q. And a reduced sentence would come from the
19 judge?

20 A. Correct.

21 Q. After the Government files a 5K motion?

22 A. Right.

23 Q. And if the Government doesn't file that 5K
24 motion, you can't get a reduced sentence?

25 A. Exactly.

1 Q. And to get that 5K, you've got to testify;
2 right?

3 A. I don't know.

4 Q. Well, you've got to help the Government,
5 don't you? You've got provide substantial
6 assistance?

7 A. I don't know the requirements of it. You
8 probably know more than I do.

9 Q. Let me ask this: You're sitting up here
10 telling this jury that you don't know what it's
11 going to take to get you a reduced sentence?

12 A. Well, I've got to cooperate with the
13 Government.

14 Q. Okay. So you know you've got to do that;
15 right?

16 A. Right.

17 Q. Let's look at the next page, please. And
18 one more over. So let's talk about the sentencing.
19 This is the sentencing in 4269, the Sosoya case;
20 right?

21 A. Yes.

22 Q. So in the Sosoya case you pled guilty to
23 imprisonment for a period of not more than 20 years;
24 right?

25 A. That's correct.

1 Q. So that means somewhere between zero and
2 20 years?

3 A. That's correct.

4 Q. And you also plead guilty to a period
5 of -- the other count in the Sosoya case for a
6 period of not more than 10 years; right?

7 A. That's correct.

8 Q. So somewhere between zero and 10 years;
9 right?

10 A. Yes, sir.

11 Q. And if you had gone to trial in the Sosoya
12 case and got convicted of these counts, you'd be
13 facing some period of time, potentially up to 30
14 years?

15 A. Right.

16 Q. But the Government has agreed to a
17 concurrent sentence, haven't they?

18 A. Right.

19 Q. Which means instead of 20 and 10, 30
20 years, it could be 20 and 10, could all be done at
21 the same time?

22 A. That's what concurrent is.

23 Q. So let's look at the next page. So now
24 we're talking about this case, the Javier Molina
25 murder; right?

1 A. Correct.

2 Q. And the term of imprisonment is for life?

3 A. Yes, sir.

4 Q. Unless, again, the Government files the 5K
5 motion?

6 A. Correct.

7 Q. And in that 5K motion, they can make a
8 recommendation to the Court about what they think
9 you ought to be sentenced to?

10 A. Okay.

11 Q. Right? I mean, you know that, don't you?

12 A. Right.

13 Q. And they're going to make that
14 recommendation, not now, but later, after the trial?

15 A. Right.

16 Q. After the outcome of this case?

17 A. Right.

18 Q. True?

19 A. Right.

20 Q. And they agreed, as you talked about, that
21 that sentence could be concurrent to the Alex Sosoya
22 sentence; right?

23 A. Yes.

24 Q. So if you'd gone to trial on October 24,
25 or around that time, instead of going to work for

1 the Government, you were facing potentially 30 years
2 for Sosoya; right?

3 A. Potentially, yes.

4 Q. And potentially life for Molina?

5 A. Right.

6 Q. And those weren't going to be concurrent;
7 those were going to be consecutive?

8 A. Consecutive.

9 Q. Right?

10 A. Right.

11 Q. And that also could have been consecutive
12 to the state time that you're doing right now.

13 A. Right.

14 Q. Because, I mean, if you're in --

15 A. My one year, what, 18 months of parole.

16 Q. So it would be concurrent to that,
17 because, otherwise, if you're in state prison and
18 you commit a new crime, the default is, it should
19 really be consecutive; it should be after that;
20 right?

21 A. Right.

22 Q. But the Government has agreed to make it
23 concurrent.

24 A. Yes, sir.

25 Q. So you've got your state time, right,

1 Sosoya and Molina all running together?

2 A. Yes, sir.

3 Q. And the sentence is going to be up to the
4 judge, but the determination that he's going to make
5 is going to be based, at least in part, on what the
6 Government says?

7 A. Yes, sir.

8 Q. You know that?

9 A. I'm aware of that now.

10 Q. Okay. And you were aware of that at the
11 time you entered this plea agreement on November
12 1st, 2017?

13 A. Yes, sir.

14 Q. When you decided at that point to save
15 yourself; right?

16 A. I guess you can call it that.

17 Q. Well, I did call it that. Would you call
18 it that?

19 A. I call it changing my life.

20 Q. Okay. So if, for instance, the Government
21 made a recommendation to you that you were going to
22 do two more years -- or excuse me, made a
23 recommendation to the Court that you would do two
24 years for Sosoya and for Molina, if they made that
25 recommendation, then you might only have to do a

1 little bit more time than what you're doing in the
2 state; right?

3 A. Right.

4 Q. I think you said you have a year and eight
5 months?

6 A. 18 months of in-house parole.

7 Q. 18 months total?

8 A. Right.

9 Q. So if they recommended two years, you'd
10 only do six more months?

11 A. I guess.

12 Q. I don't want you to guess. You understand
13 that that could happen; right?

14 A. You're saying I would only serve six more
15 months on my parole? That doesn't make sense.

16 Q. So I'm trying to understand these
17 concurrent sentences. Your sentence for the state
18 has 18 months left; right?

19 A. Yes.

20 Q. And if you got sentenced in this case and
21 the Sosoya case of 18 months, that would all be
22 concurrent to your state sentence?

23 A. Right.

24 Q. So you wouldn't do another day in prison
25 for both Sosoya and Molina?

1 A. I guess that's possible, huh?

2 Q. It is possible. And that's what you're
3 hoping for, isn't it?

4 A. Two years?

5 Q. You'd like to get out in two years, and be
6 out in the community, wouldn't you?

7 A. Now that you brought it to my attention,
8 yeah.

9 Q. That would be good?

10 A. Yeah.

11 Q. You're trying to tell this jury that this
12 just came to your attention just now?

13 A. Two years for the amount of time I'm
14 doing, the sentences? I don't know about the
15 federal system, but if they're giving me two years,
16 I'll be mighty thankful.

17 Q. You knew that it was a possibility to get
18 a substantially reduced sentence in exchange for
19 testifying, didn't you?

20 A. I was thinking more about 15 years.

21 Q. But you knew you could get a reduction in
22 your sentence; right?

23 A. Yes. Not up to two years, but --

24 Q. You just said now you were thinking about
25 15 years?

1 A. Right.

2 Q. But you said you're 33 years old.

3 A. Yes, sir.

4 Q. So in 15 years, you'd be how old?

5 A. How old will I be?

6 Q. So I don't know. Let me do the math. I
7 guess that's about 48. So if you got that kind of a
8 reduction, you could be out in the community in
9 about 15 years, before you get any good-time credit;
10 right?

11 A. Right.

12 Q. And you knew that was a possibility when
13 you decided to cooperate?

14 A. I was hoping for it, yes.

15 Q. You knew that because, as Ms. Armijo
16 pointed out, your attorney spoke to you about some
17 of these things; right?

18 A. Not two years, but yeah.

19 Q. They spoke to you about a sentencing
20 reduction?

21 A. Right.

22 Q. And gave you advice about that?

23 A. Yes, sir.

24 Q. Now, one of the things I think you
25 testified that happened, Mr. Rodriguez, was that

1 after the Javier Molina assault, you were taken to
2 PNM; correct?

3 A. Taken where?

4 Q. To PNM.

5 A. Yes.

6 Q. And put in Level 6?

7 A. I was.

8 Q. And you would describe Level 6 as solitary
9 confinement, wouldn't you?

10 A. Yes, sir.

11 Q. You were there for a long period of time,
12 weren't you?

13 A. Yes, sir.

14 Q. And you don't like being in solitary
15 confinement, do you?

16 A. You get used to it.

17 Q. But you don't like it, do you?

18 A. You get your own TV. No, I enjoy it.

19 Q. So you're okay with being in solitary
20 confinement?

21 A. So after your first three years, you get
22 used to it and you become adapted to it.

23 Q. You wouldn't have any problem being in
24 solitary confinement for the next 15 years?

25 A. Why would I be in solitary for the next 15

1 years?

2 Q. Well, let me ask you, are you okay enough
3 with solitary confinement that you could do the next
4 15 years in solitary confinement?

5 A. For what reason, though? There has to be
6 a reason. You have to go to solitary confinement
7 for a reason. If you go to solitary confinement for
8 no reason for 15 years, hell, no. I got a problem
9 with it.

10 Q. So you knew that the Department of
11 Corrections put all of the SNM members in solitary
12 confinement after Javier Molina; right?

13 A. Right.

14 Q. And you were worried, weren't you, that if
15 you got convicted in this case, you might have to
16 spend a good period of time in solitary confinement?

17 A. No.

18 Q. Well, you at least would agree with me
19 that you think that, from your cooperation, you're
20 going to get better conditions of confinement in
21 federal prison?

22 A. I don't know.

23 Q. Well, you expect it, don't you?

24 A. I haven't been in federal prison.

25 Q. You're hoping to get better federal time,

1 aren't you?

2 A. Education and -- yeah.

3 Q. Let me get back to that in just a second.

4 When you were a member of the SNM, did you ever try
5 to recruit other people into the SNM?

6 A. No, I did not.

7 Q. Never did that?

8 A. Never recruited anyone to SNM.

9 Q. And I think you talked about how you were
10 recruited to the SNM, I think it was, by Arturo
11 Garcia?

12 A. Arturo Garcia, James Yoakum, San Juan
13 Silva, and Juan Mendez.

14 Q. And they asked you to your face if you
15 wanted to be a member?

16 A. Arturo Garcia did, in 2005.

17 Q. So asking you face-to-face, that's better
18 than asking you by sending you a note or something
19 like that; right?

20 A. Yes. There is no -- you don't do that.

21 Q. Okay. But once you started working for
22 the Government, you did try to recruit for them,
23 didn't you?

24 A. I reached out to someone I consider my
25 friend, two of them.

1 Q. You tried to get people to cooperate in
2 this case, didn't you?

3 A. Two people that I think are good people.

4 Q. So the answer to my question is yes?

5 A. Yes, sir, I did.

6 Q. And I think you testified earlier that
7 you'd only had three meetings with the Government in
8 this case?

9 A. As I recall, yes.

10 Q. But you had a meeting, didn't you, on
11 November 16, 2017, with Special Agent Bryan Acee,
12 Mark Myers, Nancy Stemo, Sergio Sapien, and a person
13 named Ron Sanchez?

14 A. Yeah. I forgot about that. Yes, sir, I
15 did.

16 Q. You forgot?

17 A. That was recorded.

18 Q. That meeting was November 16, 2017?

19 A. I don't remember the date of it.

20 Q. Do you agree with me it was in November?

21 A. Yes.

22 Q. And, I'm sorry, I said 2016; it was
23 actually 2017.

24 A. It was right before Daniel's birthday,
25 yes.

1 Q. Just a couple months ago?

2 A. Yes, sir.

3 Q. But you forgot about that?

4 A. Yes, I did.

5 Q. And at that meeting you were trying to
6 recruit Ron Sanchez, weren't you?

7 A. Ron Sanchez asked me to speak to his
8 brother for him.

9 Q. Well, were you or were you not trying to
10 recruit Ron Sanchez?

11 A. No. I did a favor for Ron Sanchez.

12 Q. Did you tell Ron Sanchez that you expected
13 to get contact visits when you go to Tucson or
14 Florida?

15 A. Hell, yeah. If I'm going to go to prison.
16 I haven't had contact visits in over a decade. If I
17 have clear conduct and those are the privileges that
18 I'm able to have, yes, sir.

19 Q. So you're expecting to go to Tucson or
20 Florida federal prison; right?

21 A. Those are the prisons I think -- I don't
22 know what they are. But I think they said that --
23 something about Tucson or Florida.

24 Q. Prisons where you could go and have better
25 conditions of confinement than solitary confinement;

1 right?

2 A. I wouldn't go in solitary confinement if I
3 went into the federal system anyways.

4 Q. Well, you don't know that, do you?

5 A. I do know that.

6 Q. So if you had gone and got convicted of
7 Sosoya and convicted of Molina at trial, you know
8 for a fact that you wouldn't be in solitary
9 confinement? That's what you're saying?

10 A. I know for a fact I wouldn't.

11 Q. But you certainly know that after you've
12 been cooperating with the Government, that you can
13 go to places like Tucson or Florida?

14 A. Yes, sir.

15 Q. And those are better places to do your
16 time?

17 A. In the federal system, I hear, everyone
18 wants to do their time. Those are nongang lines.

19 Q. You said you'd never been in the federal
20 system.

21 A. No, but I --

22 Q. So you've heard.

23 A. I've heard -- I lived around the
24 federal --

25 Q. But you don't know; right?

1 A. I know inmates --

2 THE COURT: Probably what needs to happen
3 is: When Mr. Villa starts talking, you should stop.

4 THE WITNESS: Okay.

5 BY MR. VILLA:

6 Q. Okay. So Mr. Rodriguez, you've never
7 served federal time?

8 A. No, sir.

9 Q. So you don't actually know what it's like?

10 A. Yeah, I know what it's like.

11 Q. But you personally -- you don't know what
12 it's like.

13 A. No.

14 Q. You were told, when you cooperated with
15 the Government, a little bit about what it would be
16 like, didn't you?

17 A. About those prisons, yes.

18 Q. And in those prisons you get contact
19 visits?

20 A. As well as every other prison in the
21 federal system.

22 Q. Well, and a contact visit is when you get
23 to be around your family; right?

24 A. That's what all contact visits are. They
25 have contact visits in the federal system.

1 Q. I'm asking you what a contact visit is.
2 Let's talk about that. Okay? A contact visit is
3 where you get to be in a room with your family.

4 A. Yes.

5 Q. Right? Not behind a glass.

6 A. Yes.

7 Q. And when you're in Level 6, solitary
8 confinement in the state of New Mexico, you don't
9 get those contact visits, do you?

10 A. State prison.

11 Q. You don't get contact visits?

12 A. Not in state prison.

13 Q. So the answer is no?

14 A. No.

15 Q. And if you're in federal prison, having
16 cooperated, you don't have to -- as you told Ron
17 Sanchez -- worry about getting thrown in the hole;
18 right?

19 A. Because you don't have to get in trouble.
20 Do you want me to elaborate on it?

21 Q. No. Just answer my questions. Okay? The
22 hole is something you referred to as solitary
23 confinement; right?

24 A. Right.

25 Q. Now, let me take you back to when you were

1 recruited by Mr. Garcia.

2 A. Okay.

3 Q. You testified on direct examination that
4 he asked you to lay low, stay out of trouble, so you
5 could go back to a lower level of security; right?

6 A. Yes, sir.

7 Q. So that you could do some work in the
8 Level 3s in the other systems; correct?

9 A. Yes, sir.

10 Q. And that was what you were trying to do?

11 A. That's what I was trying to do.

12 Q. But you didn't.

13 A. I wasn't able to do it, no.

14 Q. You decided instead to smuggle in drugs
15 and sell drugs?

16 A. Oh, that was nonstop. That happened all
17 the time. That's how I got in trouble, though.

18 Q. Mr. Garcia told you to stay out of
19 trouble, didn't he?

20 A. That's not trouble.

21 Q. Did Mr. Garcia tell you to stay out of
22 trouble?

23 A. Yes, sir.

24 Q. And you didn't stay out of trouble.

25 A. That's not trouble.

1 Q. The answer to my question is: Yes, you
2 didn't stay out of trouble?

3 A. No, it's not yes. It's no.

4 Q. Okay. So let's talk about what happened.
5 You were selling drugs, and I think you said you
6 were bringing them in with an LC member?

7 A. Through me and another SNM member, and two
8 LC members.

9 Q. Two LC members. That's Los Carnales?

10 A. Right.

11 Q. So those are the guys that you're supposed
12 to stab on sight; right?

13 A. Right.

14 Q. And you were working with them to bring in
15 drugs?

16 A. Exactly.

17 Q. And somebody named Mr. Esparza didn't pay
18 you \$900; right?

19 A. Yes, sir.

20 Q. And I think you testified on direct that
21 you took it upon yourself to assault him; right?

22 A. Yes, sir.

23 Q. For the SNM?

24 A. Yes, sir.

25 Q. Because you didn't want to look like you

1 had been disrespected?

2 A. Right.

3 Q. So it wasn't just -- your testimony to the
4 jury is that that attack on Mr. Esparza wasn't a
5 personal issue.

6 A. It was a personal issue.

7 Q. But you did it for the SNM.

8 A. I did it because I was an SNM member.

9 Q. So it's either personal or it's related to
10 SNM. Which one is it?

11 A. I guess it's related to SNM, then; me
12 being an SNM member at the time.

13 Q. You were an SNM member at the time?

14 A. Yes, sir.

15 Q. So if you said that it was just a personal
16 issue, that wouldn't be right?

17 A. No, it wouldn't.

18 Q. Would you agree with me that when you did
19 your interview on October 24, with Agent Stemo, that
20 many SNM members -- you told her that many SNM
21 members believed that the stabbing was an incident
22 where you had earned your bones for the SNM?

23 A. Yeah, a lot of SNMers took that as me
24 earning my bones, because two of the tabla members
25 claimed that they told me to do it.

1 Q. But in fact, you did it for personal
2 reasons, not for the SNM?

3 A. Yes. At that time, I didn't disclose I
4 was an SNM member. So I was saying that to say it
5 was a personal issue. I had --

6 Q. You told Agent Stemo that it was not for
7 the SNM; right?

8 A. Right.

9 Q. It was for yourself?

10 A. Right.

11 Q. You did that for yourself?

12 A. I did.

13 Q. Just like the cooperation that you're
14 doing, you're doing that for yourself; right?

15 A. I didn't do it for any of the guys that
16 are defendants.

17 Q. You're certainly not doing it for the SNM;
18 right?

19 A. No. That seems to be the rumor, though.

20 Q. You did know at the time that you
21 cooperated that some of your good friends had also
22 cooperated; right?

23 A. Maybe two or three of my good friends,
24 yes.

25 Q. They had joined the Government?

1 A. Right.

2 Q. David Calbert?

3 A. He wasn't one of my good friends.

4 Q. Well, you knew him from Silver City;
5 right?

6 A. No.

7 Q. You didn't know him from Silver City?

8 A. David Calbert is from Silver City?

9 Q. Well, yes or no, did you know him from
10 Silver City?

11 A. No, he's not from Silver City.

12 Q. Timothy Martinez is from Silver City?

13 A. Yes, sir.

14 Q. He's a good friend?

15 A. He's a good friend, yes.

16 Q. And you knew that he had cooperated with
17 the Government?

18 A. Yeah. He consulted with me before he
19 left, yes.

20 Q. He consulted with you about cooperating?

21 A. He told me he wanted to leave, yes.

22 Q. And now you're cooperating with the
23 Government, along with your good friend?

24 A. He cooperated maybe a year ago. But,
25 yeah, we're cooperating together.

1 MR. VILLA: May I have just a moment, Your
2 Honor?

3 THE COURT: You may.

4 BY MR. VILLA:

5 Q. Let me take you back to -- you were
6 talking about after the -- the night after Javier
7 Molina was killed, or I guess it was that night.

8 A. It was that night. It was probably the
9 morning, the next morning, a.m.

10 Q. You were put in a cell over Mr. Perez;
11 right?

12 A. Yes, sir.

13 Q. Do you remember that testimony?

14 A. I do.

15 Q. And I think you testified that Mr. Perez
16 asked you -- well, let me back up. You commented to
17 Mr. Perez that it was cold; right?

18 A. Right.

19 Q. And he responded that he had brought his
20 clothes and his radio, because it was not his first
21 rodeo?

22 A. And his beanie, as well.

23 Q. And he said the words "because it's not my
24 first rodeo"?

25 A. Right.

1 Q. So you guys know, don't you, that when
2 somebody -- when something happens like this in the
3 pod, that everybody is going to get cleared out of
4 the pod?

5 A. I don't know.

6 Q. So when there is an -- in a pod, if
7 somebody gets assaulted or murdered, people are
8 going to get cleared out of the pod?

9 A. I don't know the protocol for that.

10 Q. You don't know about that?

11 A. No, sir.

12 Q. You don't know if Mr. Perez knew that?

13 A. No, sir.

14 Q. But Mr. Perez certainly knew that you came
15 into his room and took a piece from his walker?

16 A. Oh, yes.

17 Q. And he was scared; right?

18 A. No.

19 Q. Well, you told Agent Stemo that he was
20 scared.

21 A. I think that was a misunderstanding.

22 Q. I understand you're backtracking away from
23 that. But he did make a statement that, "As long as
24 it's not me"; right?

25 A. "I'm down for whatever, as long as it's

1 not me."

2 Q. When he said, "as long as it's not me," he
3 meant as long as he wasn't getting killed?

4 A. Do you want me to assume?

5 Q. Well, I don't want you to assume. I want
6 you --

7 A. Can't tell you that.

8 Q. You don't know?

9 A. I don't know.

10 Q. You don't know what he meant?

11 A. No.

12 Q. Okay. But you knew that he knew that
13 you'd taken the piece?

14 A. Yes.

15 Q. And a few hours later, Mr. Molina was
16 killed?

17 A. Yes.

18 Q. Right?

19 A. Yes, sir.

20 Q. And everybody in the pod, it's safe to
21 say, knew that Mr. Molina had been killed?

22 A. Yes, sir.

23 Q. And at some point after that happened,
24 everybody gets cleared out of the pod?

25 A. That's correct.

1 Q. Okay. So you don't know what Mr. Perez
2 meant when he said: "This isn't my first rodeo"?

3 A. Well, yeah. If you're a criminal, and
4 you're talking to another criminal, you know what
5 you're talking about.

6 Q. Okay. But he didn't tell you what he
7 meant; right?

8 A. I didn't need him to.

9 Q. Well, the question I asked you, Mr.
10 Rodriguez, is: He didn't tell you?

11 A. I know he ain't no bull-rider for sure, so
12 I don't know.

13 Q. Can you answer my question, Mr. Rodriguez?

14 A. I don't know what he meant.

15 Q. Is there some reason you don't want to
16 answer my question?

17 A. Because it's not a really smart question.

18 Q. Well, let me have you answer it, okay?

19 A. Go ahead.

20 Q. Yes or no, you did not -- Mr. Perez did
21 not tell you what he meant?

22 A. No.

23 Q. Okay. He did say that he thought he
24 wasn't going to be able to keep his clothes; right?

25 A. Say that again.

1 Q. You guys had a discussion about him losing
2 his clothes?

3 A. I told him they were going to take it from
4 him.

5 Q. He got taken out of the cell, and came
6 back in a white suit?

7 A. Right.

8 Q. Do you know that everybody in the pod got
9 put into the white suit?

10 A. I had. I had taken -- they had taken my
11 clothes from me --

12 Q. Mr. Rodriguez, that doesn't really answer
13 my question. Do you know if everybody in the blue
14 pod got put into a white suit?

15 A. I do not know.

16 Q. You don't know that?

17 A. No.

18 Q. Okay. And you certainly know that Mr.
19 Perez still had his walker; right?

20 A. Yes.

21 Q. And it was in the state that it looked in
22 Government's 89. Let look at Government's 89, if we
23 can. Do you see Government's 89 there, Mr.
24 Rodriguez?

25 A. I do.

1 Q. So when you were talking to Mr. Perez
2 through the cells that night, you said you saw him
3 walk out with the walker; right?

4 A. Say that again.

5 Q. That same night, you knew that Mr. Perez
6 had the walker, because you saw him walk out with
7 the walker?

8 A. Right.

9 Q. It looked like this?

10 A. It did.

11 Q. Right?

12 A. Without the red bar.

13 Q. Because I just put the red mark in.

14 A. Right.

15 Q. But it had these cloths on there?

16 A. Yes, sir.

17 Q. And you would agree with me that, at least
18 10 hours or some hours before that, it had a metal
19 bar there; right? A metal bar that you took away?

20 A. I can't make that estimation, but
21 somewhere --

22 Q. It was the same day; right?

23 A. -- it was the morning.

24 Q. We don't need to play games, do we?

25 A. It was the morning.

1 Q. I thought you testified that you took it
2 from Mr. Perez' walker --

3 A. Right.

4 Q. -- in the afternoon.

5 A. Yes.

6 Q. And sometime that night you're put into a
7 cell where Mr. Perez is?

8 A. Right.

9 Q. And you realize he has a walker?

10 A. Yes.

11 Q. And it's in the state that it's in in
12 Government's 89?

13 A. Yes.

14 Q. And before you took the piece of metal
15 off, it wasn't in that state; right?

16 A. Before I took the piece of metal off, it
17 didn't have the cloth on it?

18 Q. That's right.

19 A. That's correct.

20 Q. So that might draw attention to Mr. Perez,
21 wouldn't it?

22 A. Well, yeah.

23 Q. Somebody might look at that and get
24 suspicious; right?

25 A. Correct.

1 Q. So Mr. Perez was asking you if it was all
2 good with those things; right?

3 A. Right.

4 Q. Because he was worried.

5 A. He was worried.

6 Q. Now, let me show you Government's 73. Mr.
7 Rodriguez, let me show you what's already been
8 admitted as Government's Exhibit 73. This is a rope
9 that I'll represent to you was seized by the State
10 Police from --

11 THE COURT: Mr. Villa, I'm wondering if we
12 ought to take up this topic in the morning.

13 MR. VILLA: I think that's fine, Your
14 Honor.

15 THE COURT: I appreciate everybody's hard
16 work. I appreciate everybody taking breaks, getting
17 back on time, and being here in the morning. And I
18 look forward to seeing you at 8:30 in the morning.
19 Have a good evening. Appreciate it. Be safe.

20 (The jury left the courtroom.)

21 THE COURT: All right. Appreciate
22 everybody's hard work. Y'all have a good evening.
23 See you in the morning.

24 MS. JACKS: Your Honor, I'm sorry, I
25 thought the Court was going to admonish the witness.

1 I thought we discussed that at a recess.

2 THE COURT: All right. When you're being
3 held in the holding cells downstairs, don't talk to
4 any of the other witnesses.

5 THE WITNESS: All right, Your Honor.

6 THE COURT: It's not that I don't want you
7 to just talk about the case. Just don't talk to
8 them at all while you're testifying.

9 THE WITNESS: Okay.

10 THE COURT: Have a good evening.
11 Is that sufficient?

12 MS. JACKS: Thank you.

13 THE COURT: All right. Have a good
14 evening.

15 (Court stood in recess.)
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
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

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4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 3rd day of February, 2019.

13
14 
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